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FOREWORD

The obligation of those in sacred Orders to pray on behalf of those whom they serve is so obvious that it scarcely requires mention. For centuries this obligation has been fulfilled by recitation of the divine Office. The juridic obligation of the divine Office which arises by reason of sacred Orders was originally introduced by custom and received its first formulation in the common law in the Code of Canon Law.

This present study deals with all those who are obliged by law to recite the divine Office, which embraces those bound by reason of sacred Orders, benefice, membership of a Chapter and religious profession. However, special attention has been devoted to the obligation that arises from the reception of sacred Orders.

In the Latin discipline the subjects of the obligation are clearly defined. Such is not the case in the Oriental law. This writer, when dealing with the obligation in the Oriental Churches, confined himself to determining the subjects of the obligation in each individual Oriental Church. In the matter of the history of the liturgy of the Office, the accepted authorities on the history of the liturgy were used.

The writer wishes to thank the Most Reverend Joseph L. Federal D. D., Bishop of Salt Lake City, for the opportunity to undertake advanced studies in Canon Law at the Catholic University of America. An expression of gratitude is due to the Very Reverend Meletius M. Wojnar, O.S.B.M., S.T.L., J.C.D., who conducted the writing of this dissertation, and the faculty of the School of Canon Law of the Catholic University of America. He also wishes to thank the members of his class for their assistance, and all others who have, in any way, contributed to the preparation of this dissertation.

PART ONE

HISTORICAL SYNOPSIS

CHAPTER I

THE DIVINE OFFICE IN THE FIRST TEN CENTURIES

Article I. The Development of the Divine Office

In the first chapters of the Acts of the Apostles, it can be noted that a custom of prayer at set hours was common among the early Christians: "Peter and Paul were going up to the temple at the ninth hour of prayer."[1] This custom was fulfilling "the need to pray continually" of which Christ spoke,[2] and it also arose from the customary Jewish hours of prayer.

In addition to this custom the early Christians gathered on Saturday and kept vigil through the night before celebrating the agape on Sunday. In these vigils are to be found the beginnings of the nocturns of our Office. "The nocturnal group had its first element in the 'vigil', which in primitive times was celebrated in the night between Saturday and Sunday."[3]

The spirit of brotherhood, which was a very vivid reality in the primitive Church, led to the growth of Christian assemblies, many of which were dedicated to prayers.[4] These assemblies varied in number from area to area, and the form and order of prayers differed in each, but by the fourth century there is evidence of an organized Office in Jerusalem at least.

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[1] Acts of the Apostles, III, 1.

[2] Luke, XVIII, 1.

[3] Battifol, History of the Roman Breviary (translated from the 3. ed. French, New York, 1912), p. 1.

[4] Salmon, The Breviary Through the Centuries (translated from the French, Collegeville, Minn.: The Liturgical Press, 1962), p. 2.

The Diary of Etheria, a Spanish pilgrim to the Holy Land in the 4th century, described the Office as it was then celebrated in Jerusalem. "At the tenth hour, which we call licinicon, and we at home call lucernarium, the people crowd to the Anastasis. All the candles are lit, and they chant the vesper psalms with long antiphons. At the appointed time the bishop comes and seats himself on his lofty throne, with the priests around him." The Office began at cock-crow, continued to day break, and was celebrated chiefly by the monks; the clergy joined in some parts, and the laity were also present.[5]

The Constitutiones Apostolorum of the mid-fourth century bears out this notion of some type of regular Office; it exhorts the bishop, "When you teach, command and exhort the people to frequent the church in the morning and evening every day, to sing psalms, . . . in the morning the 62nd psalm, in the evening the 140th psalm."[6]

It can be noted that the Office described by Etheria was to a large extent performed by the monks. The growth and development of monastic institutions had a very important effect on the growth of the obligation of the divine Office, for the great organizers of monastic communities made the celebration of the divine Office a primary obligation of all who accepted their Rules.

St. Pachomius (died 346), the great force in organizing the community form of monasticism, expressly imposed on the members of the community the

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[5] Sylviae Aquitanae peregrinatio ad loca sancta, ed. Geyer in Corpus Scriptorum Ecclesiasticorum Latinorum, Vol. XXXIX (Vienna, 1898), pp. 71-72; translation from Baudot, The Breviary (St. Louis, 1929), p. 9.

[6] Constitutiones Apostolorum, Lib. II, 59, Didascalia et Constitutiones Apostolorum, ed. F.X. Funk (Paderbornae, 1905), I, 171.

obligation of participating in the common Office.[7] He also demanded that those who could not be present at the common prayer, because they were on a journey or engaged in essential work, should pray at the specified times where they were.[8]

St. Basil the Great (died 379) gave the final form to the cenobitical life of the monks in the East. "By his Rule a new age of monastic life arose. Before St. Basil the monastic life consisted in the solitary life, eremical. St. Basil transformed it into a common life, cenobitical."[9] In his great Rule he lays down the times at which prayers should be recited in the monastic community:

> Prayers are recited early in the morning, so that the first movements of the soul and the mind may be consecrated to God. . . . Again at the third hour the brethern must assemble and betake themselves to prayer. . . . But if some, perhaps, are not in attendance because the nature or place of their work keeps them at too great a distance, they are strictly obliged to carry out wherever they are, with promptitude, all that is prescribed for common observance, for "where two or more are gathered in my name . . . " Again (they must pray) at the sixth hour and at the ninth hour.[10]

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[7] "Ad collectam, et psallendum et orandum nullus sibi occupationes inveniat, quibus se dicat occupatum, quasi ire non possit." -- Regula 141, Praecepta S. Pachomii, in Migne, Patrologiae Cursus Completus, Series Latina (Parisiis, 1844-1864), XXIII, 78.

[8] "Et si in navi fuerit, et in monasterio, et in agro, et in itinere, et in quolibet ministerio, orandi et psallendi tempora non praetermittat." -- Regula 142, loc. cit.

[9] Wojnar, De Regimine Basilianorum Ruthenorum (Romae, 1949), I, 2. ed., p. 7.

[10] St. Basil, The Long Rule, Question 37, in The Fathers of the Church, Vol. IX (New York, 1950), 309 ff.

St. Basil clearly laid an obligation on his monks to participate in the Office and, as in the Pachomian Rule, St. Basil demanded that they carry out their obligation even if they were not with the community at the time of prayer.

These Rules indicate a certain uniformity of practice and of obligation in the organized monasticism of the East. John Cassian, who made a study of monasticism in Egypt in the early fifth century, in his Institutes, written between 419-426, described the uniform method of recitation of the Office which existed in the communities of monks throughout Egypt and the Thebaid.

> And so throughout the whole of Egypt and the Thebaid, where monasteries are not founded at the fancy of every man who renounces the world . . . in these we have noticed that a prescribed system of prayers is observed in their evening assemblies and nocturnal vigils.[11]

The obligation of the Office in the monasteries seems to have evolved from a community obligation to a personal obligation, in so far as the individual monk had to make up for the portion of the Office that he missed in the community celebration in church.

The organization of the diocesan clergy in the fifth century was in a fluid condition, they usually resided with the bishop, and the liturgy was celebrated in the cathedral church. In many instances the monks, whose monastery was attached to the principal church, celebrated the Office there; the clergy of the place took part in it also, only a few of the Hours were celebrated each day in any other church.[12]

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[11]Cassian, Institutes, Lib. II, C. III, in The Works of John Cassian, in A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, Vol. XI (New York, 1894), p. 205.

[12]Salmon, op. cit., pp. 5-7.

Early conciliar legislation indicated the requirement that some of the canonical Hours be celebrated in the church. Some of these councils put an obligation on the clergy to be present at these Hours and imposed penalties on those who were negligent in this matter. Among the Arabic canons attributed to the Council of Nicaea in 325, one required the celebration of the night and day Hours.[13] The Synod of Laodicaea indicated a similar requirement.[14]

The I Council of Toledo in 400 stated that any priest, deacon or subdeacon, or any cleric attached to the church who does not attend the daily celebration of the Office is deposed as a cleric.[15] A similar stricture was placed by the Irish Council held in 456 under St. Patrick:

> Canon 7: Any cleric who, when summoned, out of negligence fails to appear at the meetings for matins or vespers shall, except he be held under the yoke of servitude, be considered a stranger, (alienus, explained as "excommunicated".)[16]

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[13] Canon 64: Of the Offices in the Church, the night and day offices, and the collect for all those who rule the Church (must be celebrated in church). -- Translated in The Seven Ecumenical Councils of the Undivided Church, (New York, 1901), p. 13.

[14] Canon 18 - op. cit., p. 134.

[15] Canon 5: "Presbyter, vel diaconus, vel subdiaconus, vel quilibet ecclesiae deputatus clericus, si intra civitatem fuerit, vel in loco in quo ecclesia est, aut castello aut vico, aut villa et ad ecclesiam ad sacrificium quotidianum non accesserit, clericus non habeatur, si castigatus per satisfactionem veniam ab episcopo noluerit promereri." -- Mansi, Sacrorum Conciliorum Nova et Amplissima Collectio, III, 999. Quotidianum sacrificium does not refer to the Mass, which was not then celebrated daily, and the later usage of this canon refers to it as affecting the Office. Cf. Burchard, L. 2, c. 152; Ivo, VI, 243; Gratian, c. 9, D.92.

[16] The Works of St. Patrick, ed. Ludwig Bieler, in Ancient Christian Writers, No. 17 (Westminster, Md.: Newman Press, 1953), pp. 51-52.

The Council of Vannes (465) repeated the canon of Toledo and also imposed a penalty.[17]

By the end of the 5th century there is a spread of the obligation on clerics attached to a church to attend the Office of that church. The Office referred to was the solemn Office as celebrated in the church at the particular hours, and there was no question of the cleric's need of making up the Hours he missed, as was noted to be the case in the monastic rules.

Article II. The Influence of St. Benedict

In the fifth century the daily form of the Office was a local affair, there was no uniformity of practice in any province. The monasteries in the West were generally separate and independent institutions, with a divergence of liturgical practice.[18] The Roman Liturgy was fairly developed at this time, and the practice was relatively uniform in the Roman churches.

It was this Roman Liturgy which was to be adapted by the Father of Western Monasticism, St. Benedict (d. 547). The Rule which he wrote in 534 became the basic monastic rule for the next seven centuries. For our purpose, Benedict's importance lies in that, "according to Benedict the purpose of the monastic life is to glorify God, the chief task of the schola dominici servitii being to cultivate

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[17]Canon 14: Clericus qui intra muros civitatis suae manere constiterit, et a matutinis hymnis sine probabili excusatione aegritudinis inventus fuerit defuisse, septem diebus a communione habeatur extraneus." Hardouin, Acta Conciliorum et Epistolae Decretales ac constitutiones Summorum Pontificum (12 vols., Parisiis, 1714-1715), II, 798.

[18]Cf. Salmon, op. cit., p. 105.

liturgical worship (opus Dei, officium divinum)".[19]

He organized the Office for the monks on a complete and daily basis. Though primarily the obligation rested on the community, each individual member of the community had the obligation to be present at the Office.

> Chapter 43: As soon as the signal for the Divine Office is heard each one must lay aside the work he is doing and come with all speed. . . . Nothing, therefore, is to be put before the work of God (divine Office).
>
> Chapter 50: Brethren, who are working at a distance, and cannot come at the canonical hour to the Church, and the abbot judges it to be so, celebrate the opus Dei where they are working, in holy fear and on bended knees. Likewise, those who are sent on a journey should not omit the required hours, but say them as best they can.[20]

The Regula Magistri, drawn up by Benedict of Aniane (d. 821) in the 9th century, laid down in more detail how far away one must be from the church, in order that one may be excused from the Office in choir.[21]

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[19]Bihlmeyer and Tüchle, Church History, (3 vols., translated from the 13th German edition, Westminster: Newman Press, 1958-1966) I, p. 370.

[20]Cap. XLIII: Ad horam divini officii mox ut auditum fuerit signum, relictis omnibus quaelibet fuerit in manibus, summa cum festinatione. . . . Ergo nihil operi Dei praeponatur.

– Cap. L: Fratres qui omnino longe sunt in labore, et non possunt occurere hora competenti ad oratorium et abbas hoc perpendit, quia ita est, agant ibidem opus Dei, ubi operantur, cum tremore divino, flectentes genua. Similiter qui in itinere directi sunt, non eos praetereant horae constitutae: sed ut possunt, agant sibi et servitutis pensum non negligant reddere.-- Regula Commentata S. Benedicti, PL, LXVI, 675 and 743. The dependence on the Rules of St. Pachomius and St. Basil is interesting, and the idea of a personal obligation to fulfill the Hours if one is absent from the chapel is important; here the same Office could not be referred to, because for the chapel Office several different books were required.

[21]Caput 55 stated that a monk who is more than fifty paces from the monastery is not bound to come and recite the Office. The reason it gives for not demanding his presence is not that he could not get to the chapel on time, but "Palpitante stomacho, vocem psalmi non valeant adimplere." -- PL, LXXXVIII, 1016.

The Rule of St. Benedict, because it became so widespread and influential, and because the liturgy of the monasteries was copied in the parish churches helped greatly toward a regularizing of the daily format of the Office in the parochial churches. The growth of the obligation owes much to it also.

The lack of uniformity of both the format and obligation in the various areas can be noted in the legislation of the local councils of the sixth century. The Council of Tarragona (516) decreed that the priest, deacons and clergy of a church should succeed one another weekly so that the Office would be celebrated each day in church. All the clergy had to be present on Saturday for the Sunday Office.[22] The Council of Epaone (517) stated that the order of the Office of the metropolitan should be followed.[23] The II Council of Orleans (533) and the II Council of Tours (567) declared sanctions on those clerics who failed to celebrate the Office.[24]

The Council of Toledo (633) had what appears to be the first mention of a private recitation for clerics. This cannot refer to the private recitation of the solemn Office of the church, because no cleric would have all the volumes needed for such a task.[25] It had reference to the clerics obligation to make up for the Office by reciting prayers of his choice.

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[22]Cap. VIII: "De diocesanis ecclesiis, vel clero id placuit definiri, ut presbyteri vel diaconi, qui in ibi constituti sunt, cum clericis, septimanas observent; id est, ut presbyter unam faciat hebdomadam; qua explet succedat ei diaconus similiter ea scilicet conditione servata, ut omnis clerus die, sabbato ad vesperam sit paratus, ut omnis quo facilius die dominico solemnitas cum omnium praesentia celebretur." -- Mansi, VII, 542.

[23]Can. 27, - Mansi, VIII, 562.

[24]Canon 14 of Orleans in Mansi, VIII, 837; Canon 18 of Tours stated: "Quicumque minus quam duodecim psalmos ad matutina dixerit, jejunet usque ad vesperam," Mansi, IX, 796.

[25]Can. X: "Quisquis . . . sacerdotum vel subjacentium clericorum hanc orationem Dominicam quotidie aut in publico aut in privato officio praeterierit, propter suberbiam judicatus, ordinis sui honore mulcetur seu privetur. . . ." -- Mansi, X, 621.

At this period there was an increase of rural churches, but as yet the clergy continued to live in groups attached to the cathedral or senior church. They did, however, carry out the services at the rural church; the III Council of Orleans in 538 indicated that the Office be celebrated in these churches.[26]

The Office of the sixth and seventh centuries must be seen in this ecclesiastical environment. The Office was then the prayer of each local church celebrated by both the clerics who were in its service and the congregation, but its celebration was not the same everywhere.[27] In the cathedral and churches or basilicas of the larger towns, it was quite common to have a monastery attached to the church; the monks chanted the daily Offices, and the clergy only attended the principal Hours: Lauds and Vespers.[28]

Article III. The Carolingian Reform

In the seventh and eighth centuries there was a gradual break-down of the common life among the clergy, in consequence of the general decay in clerical living, and as a result of the fact that the bishops were becoming more and more the appointees of the lay lord. The bishop became an important political figure, paying less and less attention to the requirements of liturgical practices, such as the celebration of the Office.

St. Boniface, (d. 754) the English apostle of Germany, was the first to attempt a reform. In the Council of Cloveshoe in England (747), he attempted to

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[26] Can XVIII, III Council of Orleans, - Mansi, IX, 17.

[27] Cf. Salmon, op. cit., p. 108.

[28] Jungmann, Public Worship (Collegeville, Minn.: Liturgical Press, 1957), p. 154.

regulate clerical life. Canon 15 stated that the seven canonical Hours should be celebrated in a uniform manner in all churches according to the usage of the Roman Church, i.e. the Roman basilicas and monasteries.[29] This was a real innovation, when we consider that up to this time the secular clergy both in the East and in the West were only bound to recite Matins and Vespers. The Penitentials of Egbert of York of this period laid down penalties for those who missed the Office.[30]

This enactment was a sign of the future, especially in Germany. There, St. Chrodegang, bishop of Metz in the mid-eighth century, strove to reintroduce the vita communis among the clergy. To this end he drew up a rule for his clergy in 760, Regula Canonicorum, requiring that "they live and take their meals in 'claustrum' and assist daily at the solemn services including the Divine Office".[31] He introduced the Roman liturgy in the Office, because he had been influenced greatly by Roman practices during his two visits to the Eternal city.

His regulations on the obligation to celebrate the Office are of the utmost importance in the development of the institute of the obligation.

> Chap. VI: That all should come to the divine office at the canonical hour. At the hour for the divine office, as soon as the signal is heard those who are close enough to the building to be able to get there for the office must stop whatever they have in hand and hurry with all speed, if anyone is far from the church, so that he cannot get to the opus Dei at the canonical hours, and the archdeacon judges this to be the case,

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[29] Concilium Coveshoviae II -- Hardouin, III, 1956

[30] Poenitentiales Egberti, Lib II, Cans. I-II -- Hardouin, III, 1976.

[31] Bihlmeyer and Tüchle, op. cit., II, 108: "This institution was called Vita Canonica or communis and those who lived in this manner were called canonici, canons. Whether the title is derived from 'canon', a list, or from the fact that they recited the horas canonicae is still disputed." This latter observation seems to indicate that the Office was not being recited by all priests or clerics at this time.

> he shall perform the work of God right where he is at the time, with reverent fear; and the archdeacon or the head of the church shall see to it that the signals are sounded at the proper time.[32]

The influence of St. Benedict's Rule is obvious, especially regarding the necessity of making up the Hours for which one was not present in church by reciting prayers at a similar hour where one was then situated.

Throughout the reigns of Pepin and Charlemagne the effect of Chrodegang's Rule can be seen in their legislation. An English Synod of Chelsea in 786, which is included in the German Collection (M.G.H.) of Councils, demands: III--That the bishop take great care that the canonici live canonically; VII--That all churches celebrate the canonical hours publicly and with reverence.[33] The Capitulary of Pepin almost repeats verbatim the requirement of Canon IV of Chelsea regarding the common life for clerics.[34]

Charlemagne surpassed his father in his zeal to bring about a reform of the clergy, and attempted to bring uniformity to the liturgy by introducing the Roman system of worship, which was in the tradition of Chrodegang and Pepin. In his capitulary of October 802, he dealt with the obligation of the Office for clerics.

> 2. That every priest assist at the daily prayers for the bishop by whom they are governed.

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[32] Cap. VI: "Ad horam divini officii mox ut auditum fuerit signum, relictis omnibus quaelibet fuerit in manibus, qui sic propinquo de illa domo sunt ibidem occurrere possint, cum summa festinatione venient, et si longe ab ipsa ecclesia aliquis fuerit, ita ut ad opus Dei per horas canonicas occurrere non possit, archidiaconus ita esse perpendit agat opus Dei cum tremore divino ubi tunc fuerit; et praevideat archidiaconus vel primicerius, vel custos ecclesiae, ut illa signa horis competentibus sonent." Regula Canonicorum, PL, LXXXIX, 1101-1102.

[33] Monumenta Germaniae Historica, Epistolae, Vol. IV (Hannoverae et Lipsiae, 1908), p. 22.

[34] M.G.H., Legum, Sectio II, Capitularia Regum Francorum, I, p. 91

> 8. That all priests ring the bells of the churches at the proper hours of the day and night and pray the sacred offices to God at those times and that they teach their people how God is to be adored, and at what hours.[35]

The Synod of Aachen (816) again made the observance of the Office of primary importance for the canonici, and almost repeated Canon 24 of St. Chrodegang's Rule. However it did not make any mention of a requirement to keep the canonical Hours if one were prevented from attending the choir.[36]

The legislation of Charlemagne was bound to have a far-reaching effect, but that does not mean that there was a spread of the obligation all over the Western Church, though some councils did follow his example. The Council of Rome under Pope Eugene II in 826, however, throws a certain light on the obligation of the Office; it forbade the building of churches if there were no priests attached to celebrate the Office.[37] The III Council of Tours (813) in treating the common life of canonici demanded that they celebrate the divine Office at the canonical hours.[38]

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[35]2. "Ut unusquisque sacerdos cotidianis adsistat orationibus pro pontifice cuius gubernatur regimine."
8. "Ut omnes sacerdotes horis competentibus diei et noctis suarum sonent aecclesiarum signa et sacra tunc Deo celebrent officia et populos erudiant, quomodo aut quibus Deus adorandus est horis."-- M.G.H., ibid., p. 106. He also prescribed that priests learn the Roman chant to perform the Office in an orderly fashion, -- ibid., p. 80.

[36]Can. CXXXI: "Studeant summopere canonici praedictas horas vigilantissima cura custodire et in his divinum officium huniliter ac devote persolvere. Mox enim ut datum fuerit signum, festinato omnes ad ecclesiam conveniant. . . ." -- M.G.H. Legum, Sectio II, Concilia Aevi Karolini, Vol. 1, 408.

[37]Can. 24: De piis locis quae sine presbyteris existunt states this. -- M.G.H., Leges, Concilia Aevi Karolini, II, 577. This indicated that the Office was to be celebrated in Church, not in private.

[38]III Council of Tours (813), Canon 23 -- Mansi, XIV, 86.

Through the next century there are added examples of the obligation of celebrating the Office being laid on the clergy by law; one such was in the Constitutions of Gualterius of Sens.[39] A text of Hincmar of Rheims (806-882) will be dealt with under Gratian who made much use of it.

The attempted reforms of clerical life by Charlemagne and Chrodegang were not too widespread, but they did have an effect for some time; with regard to the Office they had a profound effect. In consequence of this legislation there was a gradual spread of the obligation for all clerics to be present at the chanting of the Office at the canonical hours; this obligation was linked to the demand for the common life among the clergy, which made it certain that the Office in question was the solemn Office of the church to which the cleric was attached. This Office had by the tenth century become more organized and there was a certain attempt at uniformity in the usage for the various churches. This format was based on the Office as celebrated in the Roman basilicas.

Just as the notion of a common life for the clergy fell out of favor at least with the clergy, though not with the authorities, before the tenth century, and the effects of the Carolingian Reform were lost by the eleventh century, it would be incorrect to believe that the clergy of each church were faithful in fulfilling the law of attendance at the solemn celebration of the Office, which practice they had inherited from the monastic institutions.[40]

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[39] Can. VIII of the Council of Sens in 913: "Moneantur capitula saecularia personarum, maxime cathedralia, ut ipsi conveniant, et ordinent, et tracent, quod in ecclesiis suis die et nocte, per se et per clericos ecclesiarum, divinum servitium assidue competenter, secundum numerum institutorum et facultatem ecclesiarum celebretur." Hardouin, VI, I, 558. This text indicates that the usages or cursus may have been different in various churches, despite the efforts for uniformity.

[40] The Popes themselves are reported to have failed to attend the Office on occasions; Liutprand of Cremona stated concerning Pope John XII;"matutinas et canonicas horas non celebrasset," in PL, CXXXVI, 904. Cf. Bugnini, "Breviary Reform," Worship, XXXVII (1963-1964), 223.

Except for the Regula Canonicorum there is no mention in any of the legislation for the diocesan clergy of an obligation to recite the Office in private, if one missed the solemn celebration; the notion of making up for Hours missed was always confined to the monks. In the tenth century at least eight different books were used in the daily celebration of the Office in church: Psalterium, Passionarium, Homilarium, Hymnarium, Troparium, Capitularium, Kalendarium and Martyrologium.[41] Even for those who were obliged by particular statute or rule to recite the Office in private if they missed the choir, the recitation of the Office of the church was impossible, since these books were only available in the church, and no one would have them as his own. The obligation to recite the divine Office as imposed on clerics was not, then, a personal obligation of the cleric but was rather in virtue of his attachment to a church.[42]

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[41] Van Hove, Prolegomena ad Codicem Iuris Canonici (2. ed., Mechlinae-Romae, 1945), p. 195.

[42] Pope Gregory VII in the Roman Synod in 1078 placed penalties on bishops or priests who, though excommunicated, insisted on celebrating the divine Office. Cf. Can. 11: "Et Quicunque eorum seu episcopus sive presbyter praedictis Normannis, donec excommunicati fuerint, divinum officum fecerit, a sacerdotali officio perpetuo summovemus." M.G.H., Epistolae Selectae, II Fasc. II, Registrum Gregorii VII, II, p. 371. Such a penalty would hardly have been in order if the obligation to recite the Office had been a personal one for the cleric.

CHAPTER II

THE OBLIGATION OF THE DIVINE OFFICE IN THE MIDDLE AGES

The Corpus Iuris Canonici does not have a great deal of material on the recitation of the divine Office, and the full implication of what is contained there is not always immediately clear, but from a complete examination of the texts there can be ascertained the kind of obligation that was present and on whom it was binding.

Article I. The Texts of The Corpus Iuris Canonici

The most explicit statement of the obligation is a text from the I Council of Toledo (400).[1]

> If any priest or deacon or any cleric who is attached to a church, and is within the city or in any place in which there is a church and does not come to the daily chanting of the office of the hours of matins and vespers in the church, let him be deposed from the clerical state if, having been reprimanded, he refuses to deserve pardon from the bishop by (doing suitable) satisfaction.[2]

The text of the Council of Toledo is transformed; this was orginally done in the II Synod of Braga (572).[3] The canon refers to the celebration of the Office in church, which could only be the public Office of the church. It bound the priest, deacon and cleric attached to a church to attend the Office of his church. The obligation was a strict obligation, as it bound under penalty of deposition from the clerical state.

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[1] Cf. supra p. 6

[2] C. 9, D. XCII.

[3] Capitula Martini Bracarensis episcopi (572), caput 63 -- Mansi, IX, 857. Burchard of Worms used the text as it appeared in the Council of Toledo, in Decretum Burchardi, Lib. 2, c. 152 -- PL, CXL, 654; it was also used by Ivo of Chartres, Decretum Ivonis, p. 6, c. 243 -- PL, CLXI, 243.

The comment of the glossator on the word "deputatus" (the cleric who is attached to a church) is interesting. "Some say that only he is bound (to attend the Office) who is actually attached (inititulatus) to the church, others say that this is not so, that he is bound even if he is ordained on the title of its possession." The glossator is referring to a dispute which existed in his time; some claimed that one had to be actually serving in the church before one was bound to be present at the Office, whereas others held that by simply being ordained on the title of the church, the cleric was thereby bound to attend the Office. Actual attachment to a church, i.e. to be serving at the church, definitely gave rise to the obligation of attendance at the Office, but whether ordination on any other title, without actually beginning service at a church gave rise to this obligation was a matter of doubt.

From the text of the canon in the Decretum, and in view of the meaning of the text of the Council of Toledo, it would seem that only the cleric who was actually serving at a church was bound by the obligation of the divine Office. This interpretation is supported by the fact that whenever the divine Office is mentioned by Gratian, it is always in reference to the Office celebrated publicly in church, and also the faithful were ordered to be present at the Office.[4]

The Capitulum taken from the Pseudo-Council of Carthage (398) refers to beneficiaries who go out to work to supplement their inadequate income. They were allowed to do this if they did not neglect their duty, but there was also this further provision:

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[4]C. 13, D. 5, de consecratione, and C. 1, D. XCI.

> The cleric who, although he is not sick, is absent from the vigils, is deprived of his stipend and should be excommunicated.[5]

Despite the spurious character of the cited capitulum, the intent of the law was clear, the benefice-holder was to be deprived of his stipend, if he omitted the canonical Hours. The same idea was voiced by Ivo of Chartres when writing to Pope Paschal II in the beginning of the twelfth century. He suggested that the beneficiary who missed the Hours of the Office be penalized through depriving him of his share of the daily distribution.[6]

Distinctio XCI, canon 5, reads: "Clerics, who refuse to be present at divine worship are to receive the discipline according to the judgment of the bishop".[7] Distinctio XCII covered divine worship, which the glossator said ought to be celebrated in church.[8]

The most used text of the Decretum on the obligation of the Office is the one beginning "Presbyter".

> In the morning, when the morning Office is completed the priest (Presbyter) discharges the obligation of his ministry by singing prime, terce, sext and none; though however, later on at the designated times (signis designantibus) he should fulfill the appropriate hours publicly if he can, either "a se vel a scholaribus". Then after completing the hours and having visited the sick, if he wishes, while fasting, he goes out to the work in the fields (opus rurale) so that he can attend

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[5] Clericus enim, qui absque corpusculi sui inequalitate vigiliis deest stipendio privatus excommunicetur. -- C. 3, D. XCI.

[6] Ut inde quotidianus panis, quem acciperent assidui, amitterent tardi ut ad quas (al., quod) eos panis interni dulcedo non movebat, panis corporei refectio provocaret . . . Epistolae Ivonis, 219. -- PL, CLXII, 223.

[7] Clerici vero, qui ad opus sanctum adesse contempserint, secundum arbitrium episcopi ecclesiasticam suscipiant disciplinam. -- C.5. D. XCI; the verb "adesse" implies presence in the church.

[8] Cf. the Gloss on the title of D. XCII, "Cum Autem", which states: "Clerici debent celebrare officia divina in ecclesia".

> to the needs of the stranger and traveller, give assistance to the sick and comfort they dying. . .[9]

The canon continued with a quotation from the Rule of St. Benedict, which exhorted all to pray seven times a day, as we are advised by the Psalmist.[10]

The canon is attributed to the Council of Nantes, which never took place; but in fact the text is originally used by Hincmar of Rheims, in the Synod of Rheims in 852.[11] This canon is also contained as a Chapter in the Decretals of Gregory IX, but the Hour of Vespers is included among the Hours which can be anticipated in the morning.[11a]

This is the key text on the question of the obligation, especially the obligation of the private recitation. The textual interpretation would indicate that "Presbyter" referred to the priest who is attached to a church, in other words, a benefice-holder. The historical context of the Decretum would indicate that it referred only to the priest of a church, since the idea of an unattached

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[9] "Presbyter mane, matutinali officio expleto, pensum servitutis suae, canendo primam, tertiam, sextam, nonamque persolvat, ita tamen, ut postea horis competentibus, et signis designantibus iuxta possibilitatem aut a se, aut a scholaribus publice compleantur. Deinde peractis horis, infirmis visitatis, si voluerit, ad opus rurale exeat ieiunus: ut ita necessitatibus peregrinorum, et hospitum, sive diversorum commeantium, infirmorum quoque atque defunctorum succurrere possit usque ad statutam horam pro qualitate temporis, et opportunitate. . ." C. 2, D. XCI.

[10] Regula S. Benedicti, C. 16.

[11] C. IX, Capitula Synodica Rhemensis, in PL CXXV, 775. It is used by Burchard of Worms, Decretum Burchardi, L. 2, c. 105 in PL, CLX, 614; and by Ivo in Decretum Ivonis, p. 6, 182 in PL CLXI, 481. All these versions omit the opening word of the text of Gratian, "Presbyter".

[11a] C. I, X, de celebratione missarum et sacramento Eucharistiae et divinis officiis, III, 41.

cleric was not yet common, and from the nature of the spiritual work described in the canon the reference was obviously made to a priest with the care of souls. Distinctio XCI plainly referred to the cleric who must go out to work, so that he might supplement his inadequate income; and it was the canons of the next Distinctio that referred to the benefice-holder.[12]

On the question concerning whether he is bound to a private or a public recitation, the opening words of the canon suggest that he celebrate the Hours of Matins, Prime, Terce, Sext and None in the morning before going out to do the work in the fields, but it adds that he celebrate the Hours solemnly at their proper time later on, if he can do so. He could not be bound to the Office twice, and obviously the solemn celebration was preferred, since it was the normal way of fulfilling the obligation, but he was allowed to celebrate it in private if the schedule of his daily life demanded it.

Private recitation was a mere substitute for the solemn celebration of the divine Office to which one was bound. This is borne out by the fact that the second part of the capitulum in quoting St. Benedict merely used his exhortation on the importance of prayer, but made no reference to his rules obliging monks to a private recitation if they failed to be present at the solemn celebration.[13]

The gloss on the Canon (Presbyter) as it appears in the Decretals of Gregory IX[14] supports this interpretation. The glossator is Abbas Siculus (Panormitanus) who wrote in the fifteenth century. The gloss stated that this chapter referred

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[12] Cf. supra, p. 18

[13] Cf. supra, p. 11

[14] C. I, X, de celebratione missarum et sacramento Eucharistae et divinis officiis, III, 41. Cf. C. 2, D. XCI supra p. 19.

to clerics "for whom a benefice is not sufficient, and who seek a living from working (ex artificio poterit victum quaerere)". The text referred to clerics of rural churches for whom a benefice was not sufficient; he stated that the chapter demanded that the Office be said, and, for a cause--the causes being enumerated in the chapter--he could anticipate the Hours, lest otherwise they should be omitted. The glossator repeated that it referred "to poor clerics--for others, the individual Hours are to be said in their proper time and place", which is in church.[15] The gloss by Panormitanus, though written so long after the Decretals, indicates that permission to anticipate the Hours and recite them in private was an exception to the general rule.

The other important reference in the Decretals of Gregory IX is taken from the IV General Council of the Lateran (1215).

> It is a matter for regret (Dolentes) that there are some minor clerics and even prelates who spend half of the night in banqueting and in unlawful gossip, not to mention other abuses . . . They hasten through matins in a hurried and careless manner. There are others who say Mass scarcely four times a year . . . These and all similar things, therefore, we absolutely forbid under penalty of suspension, and strictly command in virtue of obedience that they celebrate diligently and devoutly the diurnal and nocturnal offices so far as God gives them strength.[16]

The Council was attempting to correct abuses that had arisen in the celebration of divine worship. The Office was frequently being omitted or celebrated in an unbecoming fashion. The Council placed a strict obligation on prelates and clerics

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[15] Gloss on the Roman edition, especially on the word, "persolvatur".

[16] C. 9, X, De celebratione missarum, III, 41; Canon 17, IV Lateran Council translated in Schroeder, Disciplinary Decrees of the General Councils (St Louis: Herder, 1937), p. 257.

to celebrate the Office worthily. As the glossator, Bernard of Pavia, pointed out; "the priest was already bound to the office," meaning that all benefice-holders were so bound.[17] The Office referred to here is, without any doubt, the Office as chanted publicly in church.

The obligation of reciting the Office was under attack in the thirteenth and fourteenth centuries, and the public celebration was falling into disuse and decay. It is not surprising, then, to find that the Council of Vienne (1312) repeated again the obligation of the choral recitation, and the text is found in the Clementinae. It condemned the negligence of the rectors of churches who had not checked clerics who acted with a lack of decorum and . . .

> presume to say or chant the canonical hours by hastening through them, by omitting portions of them, and by intermingling vain, vulgar, and wordly conversation . . . That such transgressions may not flourish and serve as an example to others, we, with the approval of the holy council, forbid that this be done in the future . . . that in cathedral, regular and collegiate churches the canonical hours be chanted with devotion and in other churches the divinum diurnum et nocturnum officium be duly and consistently celebrated if they wish to escape the anger of God and of the Apostolic See. Those who resist corrections shall be punished with ecclesiastical censure and other suitable measures . . .[18]

There was an obligation of the choral recitation of the Office for clerics attached to a church. The glossator noted that "non-beneficed clerics are not bound to say the canonical hours, unless they are constituted in sacred orders"; the glossator is Zabarella of the fifteenth century, and he reflected an opinion that had support before the Clementinae, namely that all those in sacred Orders were bound to recite the Office because of their Orders. The text of the Council

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[17] Gloss on "divinum officium" in the Roman edition.

[18] C. 1, De celebratione missarum et aliis divinis officiis, III, 14, in Clem:-Canon 9, Council of Vienne, in Schroeder, op. cit., pp. 394-395.

of Vienne does not give any indications to support this view.

The Clementinae also state that clerics who are members of the household of a cardinal or of a bishop may say the same divine Office as their superior. It would be most likely that this Office would not be celebrated in church but in the home of the cardinal or bishop.[19] This legalized a custom that was developing and indicates the beginning of the spread of the breviary, the compendium which enabled one to recite the Office even outside of church.

> The reason for this privilege was the circumstance that the form and text of the daily office of the Breviary were not uniform in the different dioceses and religious orders, which made the saying of the office in common a difficult, and at times an impossible, task.[20]

The legislation that is set down in the Corpus Iuris Canonici, obliging the cleric to recite the divine Office, did not vary very much from the legislation that existed earlier. The cleric who was attached to a church was obliged to attend the Office of that church; if he failed to do so without any excuse of sickness, he was to be penalized with the loss of his stipend. Rural clerics, who had to go to work to support themselves could, in the morning, anticipate the Hours up to Vespers. Apparently he anticipated these Hours alone, but celebration in church later was advocated if at all possible. The obligation arose from a benefice or attachment to a church.

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[19] C. 2, De celebr. missar., III, 14, in Clem;-Canon 10, Council of Vienne, in Schroeder, op. cit., p. 395.

[20] Schroeder, footnote 74, op. cit., 395.

Article II. The Increase of Private Recitation

The Apostolic Letter, Sub Catholicae, sent in 1254 by Pope Innocent IV to Cardinal Otto of Tuscany, to regulate practices for the Greek Bishops of Cyprus, stated that "all priests must celebrate the canonical hours more suo, but they must not celebrate Mass until they have completed the morning Office."[21] The commentator as quoted in the Fontes, Korolevskij, stated that "the required recitation before Mass, bore reference to the private recitation of the Office, which was beginning to be introduced in the West, . . . this (article) refers to the public celebration of the office."[22]

In examining the local councils of this period of the Corpus Iuris Canonici (twelfth - fourteenth centuries), one will note two trends: an insistence on the solemn celebration combined with a demand for the private recitation when one had failed to attend the solemn Office. The Council of Rouen, (1235) forbade the celebration of Mass until Matins and Prime had been recited.[23] Significantly a Council in the same city in 1335, one hundred years later, insisted that the Office be celebrated at the correct hours in the churches, indicating that there was a lapse in this practice.[24] The Councils of Cologne in 1280 and Chichester in 1289, both prescribed that the Office be chanted in church[25] and the Council of Florence,

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[21] Acta Innocentii PP. IV in Fontes Orientales, Series III, IV, 1, Article XX, ep. Sub Catholicae, p. 173.

[22] Ibid., p. 178, note 20.

[23] Can. 15 - Mansi, XXIII, 375.

[24] Can. 1, - Mansi, XXV, 1039.

[25] Cap. I - Mansi, XXIV, 346; Can. 15 in Mansi XXIV, 1059.

1340, placed the obligation of the solemn celebration on the clergy under pain of excommunication.[26]

The admission of a private recitation was present in the statutes of the Council of Trier, (1227), which prescribed that every priest have a breviary so that he could recite the Office while on a journey, and thus in private.[27] The Council of Ferrara in 1332 stated the importance of celebrating the Office correctly in church, but "if for any cause they are impeded, nevertheless they ought to say or read all the canonical hours and required offices, and they are absolutely bound to this, especially those who are benefice-holders or in sacred Orders; when they cannot conveniently chant the Office they should read it distinctly and intelligently."[28]

There was a reaction in some quarters to allowing or demanding a private recitation, and some councils legislated against it; the Council of Worcester in 1240 under pain of suspension, commanded chaplains who celebrated the Office alone to join with other chaplains in the parish for the Office in church.[29] The Council of Le Mans, (1247), required the monk who was alone in his parish to join the parish clergy in chanting the Office.[30]

This varied legislation is indicative of the practice of the time. There was obviously a swing away from the public celebration of the Office; when it was celebrated the tendency was to recite it in private, if they were rich enough to

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[26]Mansi, XXVI, 38.

[27]Cap. IX - Mansi, XXIV, 33.

[28]Cap. I, de divino officio, - Mansi XXV, 902.

[29]Cap. XII - Mansi, XXIII, 529.

[30]Mansi, XXIII, 751-752.

possess a breviary, though there seemed to be no obligation for them to do so if they were impeded from a public celebration. Clearly the Church wished that the Office be publicly celebrated, but the trend of the times was against it.

The growth of the Franciscan Order was one cause of the swing away from the solemn Office; these friars travelled alone a great deal, and, while they were obliged to the Office, they could not say it in choir, so they used breviaries of their own, and recited it in private. Orders and Congregations on the model of the Franciscans were to flourish in this period.

Notable too in this process was the breakdown of the common life of the clergy, which was so essential for a common celebration; this arose from the increase of benefices and the growing number of rural churches, staffed by perhaps only one priest, and far away from the see city, so that a choral celebration was proving less and less feasible.

The growth of the Universities was drawing many clerics who had benefices away from the seat of their benefices. This raised a problem that has already been noted: the cleric was bound to the Office of the church or diocese where he had a benefice or to which he was attached, and the Office of each diocese or church varied as did the Office of the Orders, so that the common celebration of the Office became impossible. This too was the age of the Wandering scholars, clerics who admitted attachment to no church.[31]

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[31]Van Dijk and Hazelden Walker, The Origins of the Modern Roman Liturgy (Westminster, Md.: The Newman Press), 1960 p. 42.

Article III. St. Thomas

In all the legislation that has been noted there were only two councils which permitted or demanded a private recitation of the Office, yet there was obviously a growth of the practice from at least the tenth century--the exact significance of what was really meant by "private recitation" will be discussed further on. The life and the demands on the time of the diocesan clergy were the causes that brought on a lack of opportunity for the choral celebrations; but it was St. Thomas who offered some theological foundation for this practice, and presumably furnished the basis for the local legislation on it. The obligation to recite the divine Office always arose only in virtue of attachment to a church or the holding of a benefice.

In his Opuscula he treated the question of the obligation on the parts of priests. He stated that:

> the office ought to be celebrated in church if possible, otherwise the praise can be given wherever and whenever it can be done becomingly and conveniently. Every priest is bound to the seven hours, all the clerics in sacred Orders, whether they have a benefice or not, and all those who receive a stipend from the Church.[32]

To support this opinion he quoted a Decretal of Gregory IX which is really only a command that all clerics should have a title of ordination, and that any cleric who has no title, is to be provided with one.[33]

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[32]Opusculum LVIII, De Officio Sacerdotis, in Opera Omnia (34 vols., Parisiis, 1871 - 1880), XXVII, 445.

[33]C. 16, X, de praebendis, et dignitatibus, III, 5.

In his Quodlibeta, dating from 1269 - 1272, St. Thomas treated of various questions on the obligation. With reference to whether one who has two churches is bound to say the Office of both; he stated that a cleric has a twofold obligation: one to God, the other to the church; the obligation to the church is governed by the statutes of the particular church and may be fulfilled by a vicar, but the obligation to God can be fulfilled only by himself.[34] On the question of anticipation he stated that it is permissible to anticipate Matins the night before for a just cause; as an example he mentioned a teacher who would have to prepare his classes.[35]

When treating of the obligation of reciting the Office of the dead on the part of the beneficed cleric who is in school, he offered a most interesting conclusion. "A cleric, by the fact that he is a cleric, and especially having been ordained to sacred Orders, is bound to say the canonical hours . . . the cleric beneficed at a church is bound to say the office in the manner of that church".[36] Here he voiced the notion that sacred Orders gave rise to an obligation to recite the divine Office, a notion that was seen in the Glossae of the Corpus Iuris.

St. Thomas reasoned that the cleric in sacred Orders was especially bound to praise God, and the prayer of praise of the Church was the divine Office. Since up to the eleventh or twelfth century all priests had benefices, and so were bound on that account to the recitation of the divine Office, they were bound to the recitation of the divine Office as their prayer of praise. Up to that time all clerics in sacred Orders were bound to the recitation of the divine Office because of their attachment to a church, but at the time of St. Thomas there were clerics in sacred Orders who were not attached or committed to a church, benefice or

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[34]"Debitas quod debet Deo, per se ipsum debet exsolvere," Quodlibet I, Art. 13, in Opera Omnia Thome Aquinatis, XV, 369.

[35]Quodlibet V, Article 29 - ibid., a 528.

[36]Quodlibet VI, Article 8, ibid., a 488.

monastery, -- priests who had been ordained on their own patrimony, the priests of the new Orders. These clerics could hardly be said to be free from the Office, yet no law enforced the obligation on them simply in virtue of their Orders. St. Thomas came up then with the explanation that a cleric in sacred orders was bound to praise God in a special way that the divine Office was the official prayer of praise of the Church, and that therefore the cleric in sacred Orders was bound to recite the divine Office to fulfill his obligation of praising God.

Article IV. Commentators on the Corpus Iuris Canonici

The only Decretist who deals with this matter is Guy of Baisio (d. 1313). He mentioned that the deposition of c. 9, D. XCII, applied only to the priest who was attached to a church, having already mentioned that there was a dispute as to whether one who was ordained "sponte" (without title or benefice) was obliged to be present (interesse) at Office in church, just like those who were attached to the church. Baisio did not take sides in the issue, but in saying that the deposition did not apply to such a priest he seemed to say that such a cleric was not gravely bound to the recitation of the Office.[37]

Pope Innocent IV in his commentary on the text, "Presbyter", stated that all clerics, "even those not in sacred Orders, should say the office or hear it every day." He added that the correct place for its recitation is the church.[38]

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[37]Guido de Baisio, Rosarium seu in Decretorum Volumen Commentaria (Venetis 1577), pp. 105-106.

[38]Innocent IV, Lib. III, tit. 41, n. 91.

Hostiensis, in commenting on the Decretals, threw light, both on the idea of the private recitation, and on the question of who was bound to the recitation of the Office. He stated that recitation of the Office in private was allowable, citing as justification the example of the Pope, the cardinals and the bishops who anticipated the Hours lest they omit them later. At the Hours of the Office, clerics who were away from church for a just cause, e.g., on business, could say it on the way (in via). However, he insisted that the correct place to say the Office was in church.[39] Private recitation was the exception, the mind of the Church was that the Office be chanted publicly in church.

Hostiensis discussed the question of who was bound to the recitation of the divine Office. He stated that one could be bound "ratione 1) tituli, 2) ordinis, i.e. sacri ordinis, 3) beneficii." There was no doubt that a cleric was bound by reason of benefice or title, for the law was quite clear on that, but the question of whether a cleric in sacred Orders was bound simply in virtue of his Orders was not a clear-cut issue. Hostiensis recognized the dispute, but held that the cleric was bound by reason of his Orders; on the text, "Presbyter", he stated that the word had reference to priest, deacon and subdeacon or to any cleric.[40]

Such a conclusion was hardly in agreement with the idea that the term referred primarily to the rural cleric, who always was a priest. The reason Hostiensis claimed that priests who were ordained on their own patrimony were bound to recite the Office was that "such a cleric, although he did not receive any support from

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[39] Hostiensis, Lectura in Quinque Libros Decretalium, Lib. III, tit. 41, n. 160, de "Presbyter".

[40] In Quinque Libros, loc. cit.

his spiritual spouse, was bound to render service to her," which service was presumably the reading of the canonical Hours.[41] Minor clerics who were in school (in scholis), if they had a title or benefice, were bound to recitation of the Office.[42] Those who were sick were not bound to recite the Office,[43] presumably because they could not attend the public Office.

In general most canonists followed the teaching of Hostiensis, among whom were Joannes Andreae (d. 1348),[44] and Boich, who implied that the cleric's obligation was more far-reaching by reason of his Orders than by reason of benefice only; a cleric when bound to recite the Office by reason of Orders was excused from the recitation only by illness, while the non-ordained beneficiary could be excused on account of study, custom or other such reasons.[45] Both of these authors cited Hostiensis as their source.

Panormitanus stated that a cleric was bound to pray at the canonical Hours of prayer, he was bound to pray seven times a day de iure divino, but the prayers that he recited at these times were not determined by divine law. The determination and distinction of Offices arose from positive law, but "septies in die laudare, est de iure divino". The Pope could dispense concerning the changing of the Office, but "I do not believe that he can dispense so that a cleric is no longer bound to say any Office."[46] The non-beneficed cleric in sacred Orders was bound to say the Office; if he omitted it once from negligence it was a venial sin, from malice it

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[41] Hostiensis, Summa Aurea, Lib. III, tit. 41, n. 22.

[42] Summa Aurea, loc. cit.

[43] In Quinque Libros, loc. cit.

[44] Joannes Andreae, Decretalium Novella Commentaria, Lib. III, tit. 41, n. 12.

[45] Boich, In Quinque Libros Commentarii (Venetiis 1576), Lib. III, tit. 41, n. 5.

[46] Panormitanus, Commentaria in Quinque Libros Decretalium (5 vols., in 7, Venetiis 1588), Lib. III, tit. 41, n. 3.

was considered mortal.[47] The ground for the obligation was the divine law which demands that one praise God, and this especially binds the cleric. As was noted in the gloss which he wrote, he again emphasized that the proper place for the celebration of the Office is in the church.[48]

The Decretalists, mainly commenting on the canon, "Presbyter", were uniform in their teaching: a cleric was bound to recite the divine Office in virtue of benefice or title, and the cleric in major Orders was bound to do so from the divine law--this was in line with the teaching of St. Thomas. The obligation was to recite the Office, the ideal being to celebrate the Office in Church with the faithful, but a private recitation was permissible. In as much as they held that the obligation to recite the Office was primary, they accordingly held that a private recitation was of obligation if one was not able to take part in the choral celebration.

Article V. Conclusions

In this period covered by the Corpus Iuris Canonici, there was obviously a change in attitude toward the obligation of the divine Office in certain respects. There was one factor that remained common to the Corpus Iuris, to local legislation, and to the canonists: the correct place for the celebration of the divine Office was the church. The Office that was celebrated in church was the solemn Office. Public celebration was the preferred way of fulfilling the obligation.

If the public celebration was impossible, the canonists unanimously stated

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[47] Ibid., n. 4, note a.

[48] Cf. supra, p. 21

that the cleric had to say the Office in private. The general legislation indeed did not demand this, but rather allowed it in one specific instance, viz., in the case of rural clerics who worked to supplement their income. The general legislation continued to insist on the continuance of the public celebration.

All agreed that the cleric who held a benefice, or who was attached to a church (had the title of a church) was obliged to say the divine Office, and this was a grave obligation. The benefice-holder who failed to be present at the Hours was deprived of his share of the daily distribution. The majority of the canonists held that the cleric in major Orders in virtue of his Orders, was obliged to recite the divine Office even though he was attached to no church or had no benefice. The basis for the obligation, as stressed by St. Thomas, was the directive in the Scriptures to praise God septies in die. For accomplishing this the Church selected the recitation of the divine Office; therefore the cleric in major Orders was bound to fulfill his obligation through his use of the prayer of the Church.

If the opinion of the commentators be accepted, then there arises a further problem that was left unanswered by them. To the recitation of which Office were clerics bound when unattached to any church? Since the fulfillment of the obligation looked primarily to a public celebration, it was the Office as celebrated in a given church that was of obligation. May one conclude that a local unattached cleric in sacred Orders followed the local usage? Perhaps so, for the private recitation was simply a substitute for the public celebration.

The general legislation of the Church, as found in the Corpus Iuris Canonici, never laid an obligation on the unattached priest or cleric in major Orders to recite the divine Office.

CHAPTER III

THE DIVINE OFFICE IN THE POST-MEDIEVAL PERIOD

The insistence of the Church on the choral Office is found again in the laws of the General Council of Basel.

Article I. The Council of Basel

In the 21st session on June 9, 1435, the Council dealt with the divine Office.

> Canon 7: This Holy Council decrees that in all cathedral and collegiate churches the hours, preceded by a suitable signal, shall be chanted reverently by all, . . . While the hours are being said in common, let no one in the choir say or read them privately. . . .[1]

The Council here admitted that a private recitation was practiced by some. Canon 8 prescribed that those who were absent from choir should be penalized with a loss of the stipend, or at least a portion of it in proportion to the number of Hours missed.

The canon does make an exception "salvis ecclesiarum consuetudinibus".[2]

> Canon 9: This holy synod admonishes anyone, even the beneficeholders, or all those who are constituted in sacred orders, since they are bound to the canonical hours, if they wish their prayer to be acceptable to God, that they do not mumble the words, abbreviate or mutilate them, or mix them with laughter, but whether alone or together that they recite the day or night hours reverently and distinctly and in a place where they will not be disturbed in their devotions . . .[3]

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[1] Schroeder, op. cit., p. 477.

[2] Loc. cit.

[3] Conciliorum Oecumenicorum Decreta (Friburgi: Herder, 1962), pp. 466-467.

This canon refers to the recitation outside the choir. It admitted the private recitation and accepted the fact that all who were in sacred Orders were bound to recite the Office; but it did not enact any law or set up binding obligation, for in passing, it simply accepted the situation as it existed; it accepted what had become customary law.

Canon 10 laid down that the benefice-holders who wandered about during the Office were to lose "ipso facts" not only the stipend for that Hour, but for the whole day, and if they did not amend after one correction they would lose the allotments for a month.[4]

These canons indicate that grave abuses existed in the celebration of the Office and a lack of zeal in its fulfillment, if it was fulfilled at all. The tendency towards a private recitation was understandable and continued in evidence in local legislation. The Provincial Council of Cashel (1453) allowed a recitation outside the church on days other than feast days.[5]

The continuing decline in ecclesiastical life during the fifteenth century as manifested in the plurality of benefices and non-residence, at them, was a cause for the neglect of the solemn celebration of the Office. The Bull, Suprernae Dispositionis Arbitrio, May 5, 1514, of Pope Leo X, given at Session IX of the V General Council of the Lateran imposed severe penalties on benefice-holders who failed to be present at the divine Office.

> We decree also that anyone who has a benefice, with or without the cura animarum, and after six months from the time that he obtained it has not said the divine Office (Breviary), though every reasonable impediment has ceased to exist, may not make

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[4]Schroeder, op. cit., p. 478.

[5]Canon 2: " . . . et aliis diebus, quomodo valeant . . . " -- Mansi, XXXV, 91.

> the revenues of the benefice his own in proportion to the time of the omission, but is bound to apply them as unjustly obtained to the church building or use them to supply the needs of the poor. If he continues this neglect; he shall, after having been warned beforehand, be deprived of the benefice, for it is propter officium that the benefice is conferred. He, who does not recite the divine Office at least twice in fifteen days, is punishable in this way, that he has placed himself in a position to be deprived of his benefice; in addition he will have to give an answer to God for this neglect. In the case of those who have several benefices, the punishment is reiterative as often as they are convicted of acting in contravention of this provision.[6]

This is the first written law which universally bound benefice-holders to the obligation of reciting the canonical hours.[7] Here there is no reference to the way the Office is to be recited, there is mention of the obligation to recite the divine Office.

The fifteenth century also saw a significant change in the spirituality of the West, through the effort to intensify Christian life among the people, a more individualistic approach to God was cultivated, which gave rise to the Devotio Moderna, typified in the Brothers of the Christian Life, and especially in the writings of Thomas a Kempis. In the realm of prayer, this personal devotion led to a swing away from the solemn celebration, and to the growth and multiplication of "exercises of piety".[8]

This particular attitude led naturally to a further increase of the private recitation of the Office. In fact, the Council of Cologne (1536) exhorted priests to read the breviary with "personal devotion" and to introduce the Bible more for this purpose.[9] The Office became more the priest's personal prayer, but the

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[6] No. 6, Schroeder, op. cit., p. 497.

[7] Wernz-Vidal, Ius Canonicum, (3 ed., Romae, 1943), n. 116.

[8] Cf. Bihlmeyer and Tüchle, op. cit., II, p. 146, n. 5; p. 152, n. 5.

[9] Cap. VIII, Sectio II -- Mansi, XXXII, 1225-1226.

introduction of new feasts caused new Offices to be added, increasing the length of time involved in the recitation, thus making the recitation of the Offices more burdensome, and less likely to be fulfilled.

Article II. The Quignon Breviary

There was a good deal of dissatisfaction with the Roman Breviary that was in use in the 15th century so Pope Clement VII asked the Spanish Franciscan, Cardinal Quiñones (1475 - 1540), to undertake the task of composing a new breviary. In his introduction to the work, completed in 1535, Quiñones said that Clement VII had asked him to "arrange the canonical hours so as to bring them back as far as possible to their ancient form, to remove from the Office prolixities and difficult details; it was to be faithful to the institutions of the ancient Fathers, and the clergy were to have no longer any reason for revolting against the duty of reciting the canonical prayers."[10]

Quiñones intended that his breviary, which was called Breviarium Sanctae Crucis after his titular church, be used only by clerics for private recitation, and not for choral use. To make it more readable, he omitted versicles and responsories and chapters, the psalter was read in the course of a week and there was an increased use of Scripture in the lessons. The order of the Office was simplified and the lives of the saints were better expressed. Pope Paul III issued a letter approving its printing on July 3, 1536, but he granted the right of using it only to the

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[10] The Second Recension of the Quignon Breviary, edited by J. Wickham Legg (2 vols., London, 1908-1912) I, xxiii. Cf. Battifol, History of the Roman Breviary, p. 182; Jungmann, Pastoral Liturgy, (New York: Herder, 1962) pp. 202-214.

clergy who individually asked the Holy See for permission.[11]

By means of this abridged and simplified Office, the Church intended to recall to the duty of reciting the canonical Hours the larger number of the clergy who had abandoned it, and it was hoped that this breviary would make recitation more pleasant. Its brevity and simplicity obviously had great appeal, because its use became widespread in a short time, and in fact in a few decades it ran to a hundred printings. It was intended solely for private use, and in fact the greatest opposition to the Quignon breviary arose from its use for public celebration of the divine Office in the churches of Spain.[11a] But Quiñones "introduced a fundamental distinction between choral Office and private Office, which the Church could not admit."[12] The Office was the official prayer of the Church, and the Church's legislation was still basically concerned with choral recitation.

Quiñones in his preface had mentioned that the breviary was an experiment and he asked for comment; the most famous comments came from the Sorbonne, in 1535, by way of condemnation of the work, and a bitter attack by John de Arze, a Spanish theologian, which he submitted to the Council of Trent in 1551. De Arze's main accusation was that the Breviary was out of line with tradition, and that Quiñones introduced novelties, a charge that would draw upon him immediate condemnation in the time of the Reformation.[13] In fact three canons condemning the

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[11] The Second Recension of the Quignon Breviary, I, xxv.

[11a] Jungmann, Public Worship, p. 163.

[12] Salmon, op. cit., p. 19.

[13] The Second Recension of the Quignon Breviary, II, 108-115; 134-212.

Quignon Breviary were drafted, with the intention of submitting them to the Council of Trent for approval.[14] Pope Paul IV, however, condemned the use of the Breviary on August 8, 1558.[15]

The popularity of the Quignon Breviary indicated the extent to which private recitation had become common, but this was against a backdrop of non-recitation by a very large number of the clergy, as evidenced by the writings of the Popes and Quiñones. The Quignon Breviary might have helped rectify the situation, as it was accommodated to the needs of the busy priest, but unfortunately it was not accepted.

At the time of the Council of Trent, the written law of the Church, with the exception of the Council of Bazel, recognized only choral recitation. There existed an obligation on benefice-holders, under pain of loss of the daily distribution, to attend the Offices; there was an obligation on clerics attached to churches to attend the Office of this church. Canonists and theologians held that benefice-holders and clerics of churches had to recite the Office in private if they failed to attend choral Office, but no general legislation demanded this. There was a growing practice binding clerics in sacris etiamsi sine beneficio to recite the divine Office at least in private.

Article III. The Council of Trent

There is no direct reference in the decrees of the Council to the obligation

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[14] Ibid., pp. 213-215.

[15] Ibid., p. 26.

of the Breviary, but its celebration in church is demanded.[16] It is very significant that the Council did not mention the obligation of the divine Office when it dealt with the obligations of priests, deacons and subdeacons in Session XXIII.[17] On the question of the reform of the Breviary, it left the final judgment to the Holy Father.[18]

The Bull, Quod a Nobis, introducing the new Breviary, which was only a correction of the old Roman Breviary, was promulgated by Pope St. Pius V on July 9, 1568. In the Bull, he said that the new Breviary was to be used

> in all Churches, Monasteries, Orders, and even exempt places in which the office must be said or has customarily been said, and all who are bound by law or custom to say the Canonical Hours according to the custom and rite of the Roman Church . . . and all who are bound to recite or chant the Divine Office in some way must sing it from the formula of Our Breviary, both in choir and outside of choir. . . .[19]

This Bull did not define who was obliged to recite the Office, but it did admit that some are bound by custom and it includes them; it also indicated a distinction between the choral and the private recitation, but stated that this breviary was to be used in both cases, thus admitting the necessity of a private recitation. However the Breviary was primarily set up to facilitate choral celebration, and the individual had to adapt it for private recitation, and so the choral recitation still held primacy. The Bull said that churches, monasteries or Orders that had a Breviary in use for two hundred years or more could continue to use it. However because so many institutes had accepted the Breviary of Cardinal

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[16]Sess. XXI, de ref., cc. 3, 4, Conciliorum Oecumenicorum Decreta, p. 705.

[17]Sess. XXIIV, de ref., cc. 13, 14, -- ibid., p. 725.

[18]Sess. XXV, super indice librorum, catechisme, breviario et missali, -- ibid., p. 773.

[19]Miller, Fundamental of the Liturgy (Notre Dame, Ind: Fides, 1962), pp. 322-323.

Quiñones, they had lost the continuity of use of their proper breviary, and were thus forced to accept the Breviary of Pius V.[19a]

Though Pius V mentioned that sanctions would be imposed against those who failed to recite the Breviary, in the Constitution dealing with this matter he simply repeated the penalties against the benefice-holders as they had been instituted by Leo X in the IV General Council of the Lateran.[20]

Article IV. Post-Tridentine Canonists

As yet there was no addition to the law concerning persons obliged to the recitation of the divine Office. Navarrus (Martin of Azpilcueta, d. 1586) in his treatise, "de Oratione" dealt with the obligation at length. He stated that "only three kinds of men are bound to recite the canonical Hours, those who were in sacred Orders, the holders of ecclasiastical benefices, and religious.[21]

On the question of those bound because of sacred Orders, he said that the text, "Presbyter",[22] referred only to priests,

> therefore it seems that subdeacons and deacons began to be bound, not by written law, but by the natural law, determined by universal custom. . . . A cleric in sacred Orders, because of the great honor he receives, is obliged, in a general and indeterminate way, by the natural law, to give greater thanks and honor to God, than the layman; it is not defined how or when this is to be done, but it is an immemorial custom to do this by saying the canonical hours.[23]

The obligation for clerics is sacred Orders arose by reason of custom; he stated that the obligation for those in sacred Orders continued, even if they were deposed,

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[19a] Breviarium Romanum, (Romae: Marietti, 1962), pp. v - vi.

[20] S. Pius V. const. Ex Proximo 20 Sept. 1571, in Codicis Iuris Canonici Fontes, cura Emi Petri Card. Gasparri editi, 9 Vols., (Romae: Typis Polyglottis Vaticanis, 1923 - 1939), n. 140.

[21] Navarrus, Opera Omnia (Venetiis, 1618), IV, "De Oratione", Cap. VII, n. 1.

[22] C. 2, D. XCI, cf. supra. p. 18

[23] Navarrus, ibid., n. 2.

because the sacred character remained.[24] He also implied that a private recitation was obligatory, because he stated that sickness could excuse one from choir, but one was still bound to fulfill the obligation domi.[25]

The opinions of Navarrus were supported by Suarez (d. 1617), who quoted the work of Navarrus in some of his own work. Suarez said that the deacon and subdeacon were bound only by custom, and on the question of whether the priest who had no title or benefice was bound by reason of his Orders, he said that it was more correct to say that he was bound simply by tradition and ancient custom.[26] He said that a priest and a deacon were not bound, by reason simply of their Orders, to say the Office in choir,[27] for only the ministers of churches were bound to a public recitation.[28] The obligation for clerics in sacris and for benefice-holders was a grave obligation. The omission of a notable part constituted a mortal sin, but the gravity was to be reckoned with a moral judgment, not an arithmetical measurement.[29]

Lessius (d. 1623) stated that the Decretal, "Presbyter", applied only to parish priests and rectors of churches. Thus by implication the priest without a benefice or title was bound to the obligation of reciting the divine Office, not by any written law, but simply by custom, and he said that deacons and subdeacons

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[24] Ibid., n. 17.

[25] Navarrus, ibid., n. 2.

[26] Suarez, De Oratione Publica Ecclesiae, in Opera Omnia (28 vols., Parisiis, 1856 - 1861), Vol. IV, Cap. XVI, n. 9.

[27] Ibid., Cap. X, n. 10.

[28] Ibid., n. 2.

[29] Ibid., Cap. XXIII, nn. 14, 16.

were bound through custom.[30] Ferraris (d. 1760) gave us an almost identical view in his Bibliotheca.[31]

Reiffenstuel (d. 1703) did not treat the divine Office as a separate question, but he mentioned that clerics were bound by reason of Orders, benefice or religious profession to recite the divine Office.[32] He repeated the penalties of the Popes for the benefice-holders who did not fulfill their obligation, and they were bound to restitution.[33] In one reference to private recitation, he said that in some places there existed a custom whereby, canons had others chant the Office for them, while they recited it privately; he regarded this as a reasonable custom.[34]

Schmalzgrueber (d. 1735) held that all clerics in sacred Orders, all religious of both sexes, and all holders of a benefice or a dignity were bound to recite the divine Office.[35] The obligation for those in sacred Orders arose, he said, from the Chapters, Presbyter and Dolentes,[36] and, as if to clarify any doubt, he continued: "The best interpreter of these laws is custom." For the obligation to arise, the Orders had to be received freely.[37]

He was not at all sure that the obligation for clerics in sacred Orders was based on the statute law. When treating of religious, he stated: "The custom of reciting the divine Office on the part of the professed religious is no different from that on the part of clerics in sacred Orders, for it is by reason of custom that clerics in sacred Orders were obliged, so that they sin mortally if they omit

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[30] Lessius, De Iustitia et de Iure (Antverpiae, 1612), Lib. II, Cap. XXXVII, nn. 44-45.

[31] Officium Divinum, nn. 19-20.

[32] Raiffenstuel, Lib. V, tit. 39, n. 63.

[33] Ibid., Lib. I, tit. 6, n. 235.

[34] Ibid., Lib. III, tit. 4, nn. 109, 110.

[35] Lib. III, tit. 41, nn. 54-56.

[36] Cf. supra. pp. 18 and 21.

[37] Ibid., n. 54.

the recitation of an Hour, even once."[38] Here he clearly stated that it was simply custom that was the source of the obligation for those in sacred Orders. He obviously regarded it as a grave obligation, and to escape mortal sin, those reciting it privately had to complete the Office "within a natural day, from midnight to midnight."[39]

He delineated the excusing causes: inadvertence, ignorance, infirmity, blindness, lack of a breviary, necessary work, dispensation by the Pope--the bishop did not have the power to dispense, except in a doubtful case.[40]

Both Reiffenstuel and Schmalzgrueber, quoting Navarrus, said that the excommunicated cleric was still bound to recite the divine Office privately.[41] This assertion, however, needs some comment. It can be seen from this that these canonists had come to regard the obligation of the divine Office as a personal obligation for the cleric in sacred Orders. But the Office was always primarily the official prayer of the Church, and the obligation from the cleric arose in virtue of his position as the officially deputed person to offer the prayer of the Church. It must then be asked: How could the excommunicate offer the Church's official prayer?

Van Espen (d. 1728) presented a lengthy treatment of the divine Office and the obligation. When dealing with those who were bound to a private recitation, he dealt with the history of the obligation. He rightly noted that up to the eleventh century the obligation for clerics arose by reason of being ordained to minister in a particular church--attachment to a church. Then he said that, since all clerics

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[38] Ibid., n. 78.

[39] Ibid., n. 86.

[40] Ibid., nn. 89-95.

[41] Reiffenstuel, Lib. V, tit. 39, n. 62; Schmalzgrueber, Lib. III, Tit. 41, n. 52; cf. Navarrus, op. cit., IV, De Oratione, cap. VII, n. 17.

had to have this attachment to be ordained, all clerics were obliged to attend the Office.[42] In the light of historical investigation, the latter statement must be questioned, because the obligation was no universal, nor was it uniform where an obligation did exist.[43]

He stated that after the eleventh century some clerics were ordained without a title to minister in a church, and some of them exempted themselves from the Office. But local councils dealt with this by stating that benefice-holders and clerics in sacred Orders were not exempted from the divine Office. He pointed, for example, to the Council of Cologne (1280). He further reasoned that because the Church remained silent on the matter through the fourteenth century, this obligation for clerics in sacred Orders and for benefice-holders was accepted; and he mentioned that the Council of Basel assumed these persons to be bound to a private recitation.[44] Van Espen cited only local legislation binding one to a private recitation.

When treating of the public recitation, he stated that only canons were bound to a public recitation; the early discipline of the Church obliged all benefice-holders and clerics to a public recitation, but in his time, by the approval of the Church, this obligation could be satisfied by way of a private recitation.[45] The source he cited to support him was Thomassinus, (d. 1695) whose work on the history of the obligation is most unreliable.[46]

Van Espen clearly stated that the subdeacon was obliged to recite the divine

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[42] Van Espen, Ius Ecclesiasticum Universum (5 vols., Lovanii, 1753), II, 661.

[43] Cf. supra., Chapter I.

[44] Ibid., p. 662.

[45] Ibid., p. 663.

[46] Cf. Salmon, op. cit., p. 23.

Office from the reception of the subdiaconate. He reasoned that normally subdeacons received the priesthood at a later date, and so they should begin fulfilling the obligation at the first sacred Order.[47] It is interesting to note that Van Espen considered that the key text of the Corpus Iuris Canonici, Presbyter, referred to the public recitation in the parish church. In addition, despite his strong opinion regarding the obligation of private recitation, whenever he referred to the obligation he always used "minus privatim", implying that the public celebration was to be preferred if it was possible.[48]

All these were quite definite in their ideas, they held that clerics in sacris were bound to recite the divine Office by reason of their Orders; the obligation arose from the fact that by their ordination they had a special duty to pray and give thanks to God, and since the divine Office was the official prayer of the Church, the immemorial custom was for clerics to fulfill their obligation of prayer by reciting the divine Office. This immemorial custom had the force of law. These writers thought of it as a personal obligation for the cleric to recite the Office at least in private; and they regarded it as a quantitative obligation. The important thing was to recite the complete Office; omission of any part without a reason constituted a grave fault.

Article V. Pope Benedict XIV

The case for holding that the obligation arising from sacred Orders was a merely customary one gained strong support from the great canonist Prosper Lambertini,

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[47] Van Espen, Opera Omnia Canonica in Sex Partes Destributa (Lovanii, 1732), I, 5.

[48] Loc. cit.; Ius Ecclesiasticum Universum, II, 661-663.

who as Pope Benedict XIV, had made a deep study of the history of the Office, with the intention of personally reforming the Roman Breviary first issued by Pius V.

In his letter to the Italo-Greeks, "Etsi Pastoralis", he stated that all in sacred Orders were to recite the canonical Hours "more suo".[49] In the Instruction to the Copts in 1745 he stated that deacons were bound to recite the divine Office,[50] and by way of explanation of this he stated:

> In the Western Church, there is imposed on priests, deacons and subdeacons this obligation (of reciting the divine office), although they did not have an ecclesiastical benefice. (The obligation) of the full daily cursus of the Canonical Hours is attached to the Sacred Order; the more common opinion of theologians teaches that this was received from ancient tradition, and has been placed in our tradition from immemorial custom.[51]

Though certain authors held that the obligation of a private recitation for clerics in sacris had been a matter of law in the earliest centuries of the Church--among them Thomassinus,[52] and Cardinal Tommasi,[53] the weight of evidence was against them, and the only text they used was drawn from the Rule of St. Chrodegang, which has been already discussed.[54]

It can be said without any doubt, then, that by the sixteenth century there was in existence a customary law which bound clerics in sacred Orders, even though they did not have a benefice, to the obligation of reciting the divine Office.

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[49]Benedictus XIV, const. Etsi Pastoralis, 26 maii 1742, VII, n. V. Fontes, n. 328.

[50]Benedictus XIV, instr. Eo Quamvis Tempore, 4 maii 1745, 42. Fontes, n. 357.

[51]Ibid., 43.

[52]Cf. Vetus et Nova Ecclesiae Disciplina 3 vols., (Parisiis, 1691), I, Cap. XXIII.

[53]Thomasios, Opera Omnia (7 Vols. Romae, 1747 - 1754), VII, 64.

[54]Cf. supra, p. 11.

Article VI. The Growth of the Private Recitation

This obligation was considered by most to be an obligation for the private recitation. The popularity of the Quignon Breviary was due to the prevalence of the private recitation, but it must be borne in mind that the Office was a public prayer, it was meant to be chanted in choir, and the Church's legislation always promoted this concept. This was the reason why permission to use the Quignon Breviary was withdrawn, and why the breviary of Pius V was set up primarily for the choral recitation.

However, the life of the diocesan clergy was becoming more and more busy, and where they were willing to fulfill their duty, a private recitation was the only feasible way. But more important, a new type of Religious Society was rising in the Church, typified in the Society of Jesus. The active life of the older Orders like the Franciscans, or Dominicans, was a cause for the introduction of the private recitation in the early middle ages, but their Constitutions demanded the choral recitation in the religious house.

The Constitutions of the Society of Jesus stated:

> All priests of our society are bound to recite the Office according to the Church's rites, but not in choir, lest they be withdrawn from those works of charity to which we have wholly dedicated our lives.[55]

The Jesuits had a hard fight before they succeeded in forgoing the obligation of the choral recitation, which was thought to be of the essence of the religious life. Pope Paul IV, himself the founder of the Theatines, ordered the choral celebration

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[55]Article 5, Constitutiones Societatis Jesu, translated in Brodrick, The Origin of the Jesuits, (New York: Image Books, 1960), p. 70.

by the Jesuits, but on his death they dropped it forever. Other Societies, some of them societies of secular priests, Lazarists, Vincentians, Oratorians, insisted simply on the obligation of a private recitation.

Another factor in the almost universal adoption of the private recitation was the spirituality of the seventeenth century, with its emphasis on personal prayer. The Office was primarily treated in the devotional works as the personal prayer of the priest.

Private recitation had become so common and was regarded as so much a part of the priest's life that the following Reply of the Congregation of Rites is interesting. "Whether a cleric in major orders satisfies his obligation, who willingly or unwillingly joins other clergy in chanting an Office other than the office of his own clergy (diocese)? Generally in the negative."[56]

This Reply was primarily concerned with the type of Office to be recited, however it does illustrate a changed attitude toward the Office. The Church's legislation had always promoted common recitation of the Office; the Roman Breviary was structured for communal celebration, and it never even mentioned private recitation. Here the Congregation of Rites gave primacy to the type of Office, in that if one must choose between reciting the correct Office or reciting in common, the correct Office must be preferred. At this stage, because of the spread of private recitation, the traditional notion of the Office as primarily a common prayer of the whole Church was being lost sight of, and an accidental such as the type of Office was deemed more important. This was surely a distorted view of the Church's public prayer.

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[56]S.R.C., Marianopolitana, 27 ian. 1899, ad III - Fontes, n. 6289.

Article VII. Nineteenth Century Canonists and the First Vatican Council

The pre-Code canonists were in unanimous agreement concerning the subject of the obligation of the divine Office. Devoti (d. 1820) reflected the true historical development when he said that the original foundation of the obligation was attachment to a church. Since all clerics had to have a title of a church up to the eleventh century, all were bound to be present at the Office; but in time the Office became associated with sacred Orders and the holding of a benefice, so that Devoti could write, "those bound to the obligation of reciting the divine Office are benefice-holders and clerics in sacred Orders; regulars (solemn vows) are bound to the choral celebration.[57]

Vecchiotti (d 1870) gave a similar historical analysis and, following Suarez, said that the obligation to the divine Office arose only from canon law, and not from the divine law; for those in major Orders it arose from custom.[58] De Angelis (d. 1881), De Luca (d. 1904), and Wernz (d. 1914) stated that the obligation arose "ratione ordinis sacri, beneficii ecclesiastici vel tituli ex professione in Ordine qui est choro adstrictus."[59] They gave very little explanation or elaboration on the obligation. In fact they did not mention that the obligation was considered to bind the cleric to a private recitation, and, what is more interesting, they made no mention of the gravity of the obligation, except in reference to the penalties placed by St. Pius V on benefice-holders who did not read the Office.[60]

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[57] Devoti, Institutiones Canonicae (Namurii, 1836), n. 565.

[58] Vecchiotti, Institutiones Canonicae (3 Vols., Taurini, 1881), I, 401-402.

[59] De Angelis, Praelectiones Iuris Canonici (5 vols in 4, Romae, 1877 - 1891), Lib. III, tit. 41, n. 8; De Luca, Praelectiones Iuris Canonci, II (Romae, 1898), n. 253; Wernz, Ius Decretalium (Vols. I-IV, Romae, 1898 - 1904), Tom. III, tit. XXI, n. 563.

[60] Const. Ex Proximo, 20 Sept. 1571, cf. supra, p. 41.

Laurentius (d. 1927) did draw a clear distinction between the public and the private recitation; he said that only canons of chapters, and religious, were bound to choral celebration as enacted by statute law, but the obligation of a private recitation was "joined by tradition and immemorial custom to sacred Orders."[61] Again Laurentius simply said that there was guilt involved if one who had no excusing cause or dispensation did not fulfill the obligation, but he did not weigh the gravity of the fault. He was content to state the penalty for the negligent benefice-holder.[62]

The sudden ending of the First Vatican Council resulted in the death of the Schema, "De Vita et Honestate Clericorum", which dealt in its second chapter with the obligation of the divine Office:

> Clerics of any rite or nation who are beneficiaries, or who are in sacred Orders, although they have no ecclesiastical benefice, must remember that they are bound to recite all the divine Office daily, either in church or privately, under pain of grave fault.[63]

This canon had a much wider scope than the custom that then existed, since it covered all "rites and nations", thus extending to Eastern rites, many of which did not have a customary obligation. It also expressed the gravity of the law, a point that was not mentioned by contemporary canonists.

It is questionable whether the canon in the form as presented would have obtained the approval of the Fathers of the Council, because many bishops were quite

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[61] Laurentius, Institutiones Iuris Ecclesiastici (Friburgi Brisgoviae, 1903), nn. 117, 118.

[62] Ibid., n. 118.

[63] Collectio Lacensis (7 vols., Friburgi Brisgoviae, 1870-1892), VII, 660.

definite in their call for a reform of the breviary and a review of the obligation, especially on the question of shortening the Offices and reducing the numbers of Saints' feasts. The French Bishops stated that the Office, as it then existed, was too burdensome for an overworked and understaffed secular clergy.[64]

The Canadians took a similar stand, emphasising that the longest Offices occurred when the priest was most busy with his ministry, on the eves of feasts or on Sundays.[65]

The German Bishops, while agreeing with the need of reform, took a more realistic approach on the binding force of the obligation for the clergy on its busiest days: "People are aware that moral theology provides for such cases, and that a clergy thus overburdened can be dispensed, in whole or in part, from the recitation of the breviary".[66]

The reform took place under Pope St. Pius X, who introduced the revised breviary by the Bull, Divino Afflatu, in 1911.[67] The complete Psalter was spread throughout the whole week, many of the Saints' Offices were eliminated and the ferial Offices were restored. Though the reform was aimed at making the Office more amenable to the life of the parochial clergy, the revised breviary was still set up primarily for a choral recitation.

Article VIII. Conclusions to the Historical Section

The Hours of the divine Office were originally private prayers. Lauds and

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[64] Ibid., p. 844.

[65] Ibid., p. 881.

[66] Ibid., pp. 874 - 875; cf. Baumer, Histoire du Bréviaire (2 vols., Paris, 1905), I, p. 403, note 2.

[67] Pius X, const. Divino Afflatu, 1 nov. 1911 - Fontes, n. 696.

Vespers, however, were adopted very early as the public liturgical prayers of the Church. The prayers were recited voluntarily by all the faithful, but only among the monks was there an obligation to attend these special hours of prayers.

From the fifth century onward, some local Councils demanded that clerics who were attached to a church be present at the celebration of the Office. This prescription probably sought to ensure that at least one ordained minister was present to make the service a liturgical service. In the 8th century, efforts were made to have priests live in communities, as was manifest from the founding of the Canons Regular by Chrodegang of Metz. The obligation of the recitation of the divine Office in common was part of their rule, and if one was absent from choir, one was bound to make up the prayer in private; this latter obligation was taken from the monastic Rules of St. Basil and St. Benedict. Private recitation simply meant reciting some prayers of one's own. It did not imply reading the Office as said in Church, since this was an impossibility. No one had sufficient books to do this, as the correct recitation of the Office required at least eight books. By the eleventh century it was commonly held that clerics attached to a church were bound to be present at the celebration of the divine Office in church.

The Corpus Iuris Canonici simply repeated this obligation: benefice-holders and clerics of a church were bound to be present at the Office of the church. It made no mention of any obligatory private recitation. St. Thomas and the Decretalists held that benefice-holders and clerics in major Orders were bound to recite the divine Office, and, if they failed to recite it in church, they were to recite it alone. Some local councils legislated for those in major Orders, but the general law made no mention of it.

By the time of the Council of Trent, all authors held that benefice-holders were bound to recite the Office in church or in private--this was contained in positive legislation; they also said that the cleric in major Orders was bound by reason of a custom which had grown up over the past centuries. There was no doubt about the existence of the custom, but it could be questioned whether this was a legally constituted custom that could enjoy the force of law, for the custom began at the time of the Decretalists, in the 13th century. At that time, the Decretalists claimed that a cleric in major Orders was bound by the written law (they quoted the decretals, cc. Presbyter and Dolentes) to recite the Office. Those who initiated the custom, viz, the clerics in major Orders who were unattached to a church, may have wrongly believed that they were bound to recite the Office, since the canonists and theologians were wrongly claiming that they were bound by the general law. Whether the custom was instituted freely or not is open to question.

However, the custom continued from the time of the Council of Trent, though the written law never took cognizance of it, and the private recitation, which was by far the most common way of fulfilling the law, was never mentioned in the rubrics or in the breviary itself. This position remained unchanged up to the time of the present Code of Canon Law, which became binding law on May 19, 1918.

PART TWO

THE LATIN LAW - CANONICAL COMMENTARY

CHAPTER IV

THE SUBJECT OF THE OBLIGATION

The Code of Canon Law refers to the obligation of the divine Office,[1] and the obligation of reciting the canonical Hours.[2] The term, "divine Office", embraces the canonical Hours and the conventual Mass.[3] However, in this study, the terms, "divine Office", and "canonical Hours", will be used synonymously. Because of variations in the different rites, the canonical Hours in question will be those of the Roman Breviary, which are "Matins, Lauds, Prime, Terce, Sext, None, Vespers and Compline. Of these Matins, Lauds and Vespers are called the major Hours; Prime, Terce, Sext, None and Compline are called minor Hours."[4]

In using the term, "divine Office" (divinum Officium), the Code always refers to the public celebration of the canonical Hours, but with the term, "canonical Hours", it refers to the private recitation. However this distinction is no longer used.[5] The divine Office is always the public prayer of the Church, no matter what the circumstance of recitation may be.[6]

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[1]Canon 610, § 1; 413, § 1; 414.

[2]Canons 135; 610, § 3; 1475, § 1, 2.

[3]Can. 413, § 2.

[4]S.R.C., Novus Rubricarum Codex, July 26, 1966 -- AAS, LII (1960) p. 622. n. 138; translated "Rubrics of the Roman Breviary and Missal" (Liturgical Press: Collegeville, Minn., 1960), p. 41.

[5]The term, "public", has at least twenty different meanings in the "Code", - Bugnini, The Simplification of the Rubrics, trans. by Doyle from 2. Italian ed. (Collegeville, Minn: Doyle and Finegan, 1955), p. 29.

[6]Constitutio de Sacra Liturgia, 4. dec. 1963, Art. 90, 98 -- AAS, LVI (1964). The translation of Constitutio de Sacra Liturgia used throughout this work is Constitution on the Liturgy (Washington, D.C.: N.C.W.C., no date).

The Rubrics of the Roman Breviary distinguish the recitation of the divine Office, "in choir or in common or by one alone".[7] It is said in choir if it is recited by a community which has the obligation of choir, under ecclesiastical law; in common, if it is recited by a community which does not have the choir obligation.[8] These same terms, in choir, in common and alone, are used in the Constitution on the Sacred Liturgy.[9] The obligation has reference only to the recitation of the divine Office in choir or alone.

Article I. The Obligation of Clerics in Major Orders

> Can. 135. - Clerics constituted in major orders, except those in canons 213, 214, are bound to recite every day the canonical hours in their entirety according to the approved liturgical books.[10]

"This is the first legislative expression of a custom that had obligatory force for a long time. It is, parenthetically, a new proof of the importance of customary law in the Church".[11] The Code does not state the manner in which the obligation is to be fulfilled, whether in choir, in common, or alone. However, the Constitution on the Sacred Liturgy of Vatican II confirmed the juridical obligation or reciting the divine Office every day, and in doing so expressed the mode of recitation.[12]

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[7] "In choro, aut in communi, aut a solo". - Novus Rubricarum Codex, n. 140.

[8] Loc. cit.

[9] Constitutio de Sacra Liturgia, Arts. 95 - 96.

[10] Can. 135. - Clerici, in maioribus ordinibus constituti, exceptis iis de quibus in can. 213, 214, tenentur obligatione quotidie horas canonicas integre recitandi secundum proprios et probatos liturgicos libros. - Trans. in Abbo-Hannan, The Sacred Canons (2, ed., St. Louis: Herder, 1960), I, 192.

[11] Martimort, "L'Obligation de l'Office", La Maison Dieu, XXI (1950), 141.

[12] Schmidt, "De Obligatione Officii Divini", Ephemerides Liturgicae, LXXVIII (1964), 351.

> Art. 96. Clerics who are not bound to Office in choir, if they are in major orders, are bound to pray the entire Office every day, either in common or individually (sive in communi sive soli) as laid down in article 89.[13]

The cleric in major Orders can fulfill his obligation by reciting the canonical Hours alone, or in common. He can participate in a common recitation with anyone, whether he be bound or not to the divine Office,[14] and the rubrics give him the right to join in the celebration of any Hours being chanted and thereby fulfill his obligation.[15]

The obligation binds all clerics, diocesan or religious, who have received major Orders, which are priesthood, deaconship and subdeaconship,[16] and begins with the canonical Hour corresponding to the time of day at which the cleric received the subdiaconate.[17] Each of the canonical Hours corresponds to a different time of the day, and ought to be recited at these times.[18] Briefly it can be stated that Lauds pertains to the morning, the minor Hours to any time between 9.00 a.m. and 6.00 p.m., Vespers is the evening prayer and Compline

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[13] Constitutio de Sacra Liturgia, Art. 96; Article 89 refers to the reform of the Hours which is proposed by the Council.

[14] Constitutio de Sacra Liturgia, Art. 101 § 3.

[15] Novus Rubricarum Codex, n. 157.

[16] Can. 949.

[17] Jone, Commentarium in Codicem Iuris Canonici (3 vols., Paderbornae: Libraria F. Schöningh, 1950-1955), I, 142; Ojetti, Commentarium in Codicem Iuris Canonici, Lib. II, De Personis (Romae, 1930), p. 130; Cappello, De Sacramentis, IV, De Sacra Ordinatione (2. ed., Romae: Marietti, 1947), n. 615.

[18] This question concerning the time of the Hours will be dealt with more thoroughly under "Liturgical Laws" in the next chapter, cf. The Time of Recitation, p. 86-96.

the night prayer; Matins can be recited at any time of the day.[19] Thus, for example, the cleric who receives subdeaconship at 9.00 a.m. is bound to begin fulfilling his obligation with one of the minor Hours.[20] Since the obligation is attached to the whole day, Jone believes that if before the Ordination ceremony, he recited the Hours to which he will be bound, he would fulfill the obligation.[21]

The obligation of reciting the canonical Hours binds all clerics who have validly received major Orders; it is a personal obligation which continues to bind them as long as they continue as clerics. The Code of Canon Law specifically exempts clerics who have been lawfully reduced or have returned to the lay state,[22] or have been reduced to the lay state by judicial sentence because they received sacred Orders under grave fear.[23]

A cleric who received his Orders freely may be laicised by rescript of the Holy See. This rescript can be granted by the Congregation for the Doctrine of the Faith which will judge the reasons for laicisation.[24] The dispensation from the obligations of sacred Orders, which a cleric receives in order to marry, is regarded as a reduction eo ipso to the lay state, and thus frees one from the

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[19]Cf. Constitutio de Sacra Liturgia, Art. 89.

[20]Cf. Coronata, Institutiones Iuris Canonici, Vol I, (4.ed. Romae: Marietti, 1950), n. 617.

[21]Jone, op. cit., I, 142.

[22]Can. 213, § 1.

[23]Can. 214, § 1.

[24]Can. 211, § 1; cf. Cappello, Summa Iuris Canonici, (3 Vols., Vol. I, 4. ed., Romae; 1945) I, n. 238.

obligation of the canonical Hours.[25] One is automatically laicized through the penalty of degradation.[26]

The Congregation of the Sacraments issues the decree in cases involving ordination induced by grave fear. The validity of the ordination is not a matter of discussion, but the fact that he was ordained under grave fear must be proved, as also the fact that he did not ratify the ordination after the fear ceased.[27]

The cleric who is under censure or deposed is still bound to recite the divine Office, since he continues to be bound by the obligations of sacred Orders.[28] Most authors agree that even the cleric who is under excommunication is still bound to recite the canonical Hours.[29] The obligation of the excommunicated cleric can be called into question. The divine Office is the public prayer of the Church, and the cleric in major Orders recites it as the Church's

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[25] Cappello, Summa, I 240; Abbo-Hannan, op. cit., I, 269; Maroto, Institutiones Iuris Canonici, Vol. 1 (3.ed., Romae, 1921), n. 734.

[26] Cans. 211, § 1; 2305. Some would hold that the degraded cleric continues to be bound by this obligation of reciting the Office; Schmalzgrueber, Lib. II, tit. 41, nn. 54-56; Vermeersch-Creusen, Epitome Iuris Canonici III (3. ed.; Romae, 1928), n. 499. Can. 135 exempts all clerics mentioned in can. 213, viz, those reduced to the lay state, which includes degraded clerics. The cleric who is degraded is freed, -- Beste, Introductio in Codicem (4. ed., Neapoli: M.D'Auria, 1956), p. 1020; Sweeney, The Reduction of Clerics to the Lay State (The Catholic University of America Canon Law Studies, n. 233; Washington, D.C.: The Catholic University of America Press), pp. 168 and 143.

[27] Can. 214, § 2.

[28] Can. 2303 § 1; cf. Wernz-Vidal, Ius Canonicum, II, De Personis, n. 117; Berutti, Institutiones Iuris Canonici, (Romae, 1936) II, p. 116.

[29] Cocchi, Commentarium In Codicem Iuris Canonici, (8 vols., 4.ed. Romae, 1931-1941), II, 120; Abbo-Hannan, op. cit., I, 193. Cf. Reiffenstuel, Lib. V, tit. 39, n. 62; Schmalzgrueber, Lib. III, tit. 41, n. 52; Navarrus, Opera Omnia, IV, "De Oratione", Cap. VII, n. 17.

public prayer.[30] Excommunication is a censure by which one is excluded from the communion of the faithful,[31] and the excommunicated person lacks the right to assist at divine services (divina officia).[32] How can one who is cut off from the body of the faithful and lacks the right to assist (take part) in divine services, be obliged to perform, even alone, a divine service, viz. the divine Office, which of its very nature is always a public act of worship? It seems to be at least probable that the obligation to recite the divine Office ceases when one suffers the penalty of excommunication.

The Code does not go into details concerning the obligation, it simply says the canonical Hours must be recited (recitandi) completely (integre) every day (quotidie), according to the approved liturgical books. The details of recitation are covered in the liturgical laws which are contained in the liturgical books, and the Code laws on this matter continue in force unless they have expressly been abolished by the Code.[33]

Article II. The Obligation of Benefice-holders

An ecclesisatical benefice is a permanent juridical institute which has been set up or established by competent ecclesiastical authority and which consists

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[30] "It is the voice of the Church, the whole mystical body publicly praising God". - Constitutio de Sacra Liturgia, n. 99; cf. n. 90. "The Church's Public Prayer is the Divine Office" - Novus Rubricarum Codex, n. 4. "Since the Divine Office is a phase of the public worship of the Church, it's recitation is imposed on clerics primarily as an act of liturgical observance, i.e., as a public prayer offered in the name of the Church" - Abbo-Hannan, op. cit., I, 193; cf. Cappello, Summa, I, 218.

[31] Can. 2257, § 1.

[32] Can. 2259, § 1: "Excommunicatus quilibet caret iure assistendi divinis officiis . . ."

[33] Can. 6, § 2. Liturgical Laws are the subject matter of the next chapter.

of a sacred office and the right to receive the income attached to that office.[34] The one who holds the spiritual office and consequently has the right to the attached income is the benefice-holder. He must always be a cleric.[35]

1. The Obligation in General

> Can. 1475, ¶ 1. Every benefice-holder is bound to recite the canonical Hours daily.[36]

This obligation is in accordance with the oldest traditions of Church law, for it was as benefice-holders that clerics were first bound to the celebration of the divine Office. The obligation binds every holder of an ecclesiastical benefice even if he is only in minor Orders. Those who are in the major Orders do not have a double obligation, but simply one obligation arising from two titles or two motives.[37] This obligation attaches to every ecclesiastical benefice. It is an integral part of it in the sense that the cleric cannot accept the benefice on the condition that he will not be bound to recite the canonical Hours, even if he is willing to forfeit the fruits that are attached; if he accepts the benefice he is thereby bound to recite the canonical Hours.[38] He must fulfill the obligation personally, he cannot do it by proxy.[39] The obligation is divisible;

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[34] Can. 1409.

[35] Can. 118.

[36] Can. 1475, ¶ 1. Beneficiarius tenetur peculiaria onera beneficio adnexa adimplere et praeterea canonicas horas quotidie recitare.

[37] Naz, Traité de Droit Canonique (4 Vols., Paris: Letouzey et Ané, 1946-1949) I, n. 419, 299.

[38] Pistocchi, De Re Beneficiali (Taurini, 1928), p. 429; Jone, op. cit., II, 600.

[39] The proposition, "Habens capellaniam collativam, aut quodvis aliud beneficium ecclesiasticum, si studio litterarum vacet, satisfacit suae obligationi, si officium per alium recitet," was condemned by the Holy Office. - S.C.S. Off. decr. 24 sept. 1665, prop. 21 damn. Fontes, n. 734; Denzinger Bannward-Umberg, Enchiridion Symbolorum, (ed. 18-20, Friburgi Brisgoviae, 1932), n. 1121, (hereafter cited as Denzinger).

if one, for any reason, cannot recite Matins and Lauds, he is not automatically excused from the other Hours.[40]

2. Choral Obligation

The general law leaves one free to fulfill this obligation either individually, or in common, or in choir, but a particular provision of the benefice may demand a certain mode for fulfilling the duty, e.g. if it is a choral benefice this would demand that the beneficiary recite the Office in choir. Members of a cathedral or of a collegiate chapter hold what is equivalent to a choral benefice.[41] Everyone who receives a choral benefice is obliged to perform every day the divine Office (divina officia), unless service by turn has been granted by the Apostolic See or by the laws of the foundation.[42] A canon or anyone holding a choral benefice is entitled to the income attached to the office and also the "daily distributions", i.e. the payment for performing the liturgical functions or divine offices in church.[43]

3. Restitution of the Income

The Constitution of the Sacred Liturgy never mentions the obligation of benefice-holders, nor do any of the documents which concern the implementation of

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[40] The following proposition is condemned: "Qui non potest recitare Matutinum et Laudes, potest autem reliquas Horas, ad nihil tenetur; quia maior pars trahit ad se minorem". S.C.S. Off. decr. 4 mart. 1679, prop. 54, damn. - Fontes, n. 754; Denzinger, n. 1204.

[41] Can. 391, ¶ 1. In general, a Chapter of canons is a corporate body of clerics attached by authorized ecclesiastical authority to a church for the purpose of performing the functions of the Liturgy. In English speaking countries, at least, the institute of Chapters of canons with choir-duty is almost non-existent, hence this matter will not be treated in detail here. Cf. Abbo-Hannan op. cit., I, 401.

[42] Can. 414. The Constitution on the Sacred Liturgy repeats this obligation in almost identical terms, Art. 95. Divine offices (divina officia) consist of the chanting of the canonical Hours and the singing of the conventual Mass, Can. 413, ¶ 2.

[43] Can. 405, ¶ 1.

the Constitution.[44] Perhaps the reason for this omission is the fact that Vatican II wished that the so-called benefice system be abolished or drastically revised and thus emphasized the spiritual aspect of an ecclesiastical office, rather than the revenues which are attached to it.[45] The material aspect of benefices is obvious in this matter of the obligation of the canonical Hours.

> Can. 1475, § 2. If the benefice-holder, without a legitimate justifying impediment, has not satisfied the obligation of reciting the canonical Hours, he is not entitled to the income proportionate to the omission, and he must give it to the church, the diocesan seminary, or the poor.[46]

The obligation to restore the income for failure to recite the Office is regarded as an obligation in justice, because it involves something to which one does not have a just title.[47] It binds all benefice-holders, even cardinals and bishops,[48] and the restitution must be made immediately, even before the intervention of a judicial sentence.[49]

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[44] S.R.C. Instructio ad exsecutionem constitutionis de Sacra Liturgia recte ordinandam, 26 sept. 1964 -- AAS, LVI (1964), 877 900.; Motu Proprio, Sacram Liturgiam, 25 Can. 1964 -- AAS, LVI (1964), 139-144.

[45] Decree on the Ministry of Priests, n. 20 -- AAS, LVIII (1966), 991-1024; Paulus VI, Motu Proprio Ecclesiae Sanctae, August 6, 1966, n. 8 -- AAS, LVIII (1966), p. 762.

[46] Can. 1475, § 2. Si, nullo legitimo detentus impedimento, obligationi recitandi horas canonicas non satisfecerit, fructus pro rata omissionis non suos, eosque fabricae ecclesiae aut Seminario dioecesano tradat vel in pauperes eroget. This penalty is almost identical with the provisions of Pope Leo X in Supernae Dispositionis Arbitrio, (Cf. supra Chapter III, pp. 35-36) which were repeated by Pope Pius V in his constitution, Ex proximo (Cf. supra p. 41). The canon who is not present in choir on any day on which he is obliged to choral duty does not receive his share of the distributions unless he is excused; cf. Cans. 420, 421.

[47] Coronata, op. cit., II, n. 1018.

[48] Loc. cit.

[49] The following proposition was condemned: "Restitutio a Pio V imposita beneficiatis non recitantibus non debetur in conscientia ante sententiam declaratoriam iudicis, eo quod sit poena." S.C.S. Off., decr. 24 sept. 1665, prop. 20, damn., Fontes n. 734; Denzinger, n. 1120.

The amount to be restored involves a moral computation; the sum must be in proportion to the obligation itself. If the only duty of the benefice-holder is the recitation of the divine Office, all the fruits must be restored for an omission of all the Hours; if there are other duties involved, e.g. parochial duties, or a chaplaincy, then the amount of time normally devoted to the divine Office has to be weighed in proportion to the other duties, and the computation of the amount of the income to be restored is to be made accordingly.[50] If the stipend from the benefice is small or uncertain, and there are other duties attached besides the recitation of the divine Office, the benefice-holder can retain all the stipend, even if he fails to recite all the divine Office.[51]

The portion of the income that he forfeits for his failure to satisfy his obligation must be restored either to the church, the diocesan seminary, or the poor. Any alms that he gave to the poor after the omission of the Hours can be considered as part of the restitution,[52] but alms that he gave before this omission or before his obligation of restitution arose cannot be credited toward the fulfillment of this obligation.[53] Any legitimate excuse which normally frees one from

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[50] This computation of the proportionate amount to be restored is a question for moralists, since it is a matter of justice. Abbo-Hannan sum up: "Since the recitation of the Divine Office does not constitute the whole of a pastor's obligation, but only a relatively small share of it, the amount he is obliged to give to ecclesiastical beneficiaries for failure to recite the Divine Office is very much less than that which would be needed to be paid by an incumbent whose sole obligation is the recitation of the Divine Office; the latter would owe one-half a day's income for failure to recite Matins, and one-twelfth for failure to recite any of the other hours". - op. cit., II, 688. "For pastors or others with a benefice involving the care of souls, a fourth or a fifth and some say even a tenth of the income corresponds to the Office." Ceronata, op. cit., II, n. 1018; cf. Jone, op. cit., II, 600; Claeys Bouuaert - Simenon, Manuale Juris Canonici, (3 Vols., Vols. I and III, 4.ed., Gandae et Leodii, 1934), III, n. 234.

[51] Jone, op. cit., II, 600; Ceronato, op. cit., II, n. 1018; Vermeersch-Creusen, Epitome, II, 800; Cocchi, op. cit., VI, 145.

[52] Ceronata, loc. cit.

[53] The following is a condemned proposition: "Restitutio fructuum ob omissionem Horarum suppleri potest per quascunque eleemosynas, quas antea beneficiarus de fructibus sui beneficii fecerit." S.C.S. Off. decr. 18 mart. 1666, prop. 33, damn, Fontes, n. 735; Denzinger, n. 1133.

reciting the canonical Hours will likewise excuse the benefice-holder, and thus free him from the obligation of restoring the income; the excusing cause may be such that it frees one from only some of the Hours, or from all of them.

Article III. The Obligation of Religious

In dealing with the obligation of religious one must make a distinction between the obligation of celebrating the divine Office in choir and the obligation of an individual recitation.

1. The Choral Obligation

> Can. 610, § 1. In religious institutes of men or women bound by the obligation of choir duty, the Divine Office must be recited daily in common, in accordance with the constitutions, in every house with at least four religious bound by the duty of choir and not legitimately excused, or with even fewer religious, if the constitutions so provide.[54]

The Code did not add any new legislation in this matter. The most ancient monastic Rules contained an obligation incumbent on the monks to celebrate the divine Office in choir. This tradition continued through the centuries, until the Jesuits succeeded in having the choral obligation dropped from their Rule; they were the first religious community which did not have the choir obligation in its Rule.[55] After the Jesuits new congregations were free to have mention of the choir obligation incorporated in or omitted from their constitutions.

The Code does not impose a new obligation on any religious institute; it simply confirms and reinforces the obligation which already binds the members

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[54] Can. 610, § 1. In religionibus sive virorum sive mulierum quibus est chori obligatio, in singulis domibus ubi quatuor saltem sint religiosi chore et actu legitime non impediti, et etiam paucriores, si ita ferant constitutiones, debet ad normam constitutionum quotidie divinum officium communiter persolvi.

[55] Cf. supra p. 48.

of the institute, an obligation which can exist in the institute from custom or can derive from the constitutions approved by the Holy See.[56]

A. Communities which are bound by this canon

The Code uses the words, "in religionibus sive virorum sive mulierum". A religious institute (religio) can refer to any religious society approved by legitimate authority, the members of which take public vows;[57] it covers both Congregations, the members of which profess simple vows, and Orders, whose members take solemn vows and are referred to as "Regulars"[58]

Does the obligation of the common law bind both communities of simple vows and communities of solemn vows where their constitutions contain an obligation to choir? Some thought that the Code was concerned only with communities that profess solemn vows, viz. Regulares and Moniales.[59] It is also held by many that the term "religio" here refers to all religious societies of both men and women, even those which profess only simple vows, but simultaneously are subject to the

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[56] Fanfani, De Iure Religiosorum (3. ed., Rovigo. 1949), n. 395; Schaefer, De Religiosis ad normam Codicis Iuris Canonici (4. ed., Romae: Typis Polyglottis Vaticanis, 1947), n. 1199; Goyeneche, Iuris Canonici Summa Principia, Lib. II, partes II-III, De Religiosis et Laicis (Romae, 1938), n. 78; Sipos, Enchiridion Iuris Canonici recognovit L. Gáles (7. ed., Romae: Herder, 1960), p. 323, nota 37; Tosc, Ad Codicem Iuris Canonici Commentaria Minora, Lib. II, De Personis, Pars II, De Religiosis (Romae, 1927), p. 187. (hereafter cited as De Religiosis).

[57] Can. 488, n. 1.

[58] Can. 488, n. 2. Vows are said to be solemn if they are recognized as such by the Church, otherwise they are simple, Can 1408, ¶ 2. The term sister (soror) applies to a woman religious of simple vows; nun (monialis) to a woman religious with solemn vows; some Orders of nuns take simple vows and retain the title "Nuns" Can. 488, n. 7.

[59] Schaefer, op. cit., n. 1199; Vermeersch-Creusen, Epitome, I, n. 711; Biederlack-Führich, De Religiosis (Oeniponte, 1919), p. 244; Pejska says all ante-Tridentine Orders, viz. monks, canons Regular, mendicant (but not military) orders, Benedictine, Dominican, Cistercian and Poor Clare Nuns and Canonesses Regular were bound by this obligation in the Code, Ius Canonicum Religiosorum, (Friburgi-Brisgoviae, 1927), p. 273; De Carlo, Ius Religiosorum (Parisiis: Desclée et Socii, 1950), n. 375; Regatillo, Institutiones Iuris Canonici (2 Vols., 4. ed., Santander: Sal Terrae, 1951), I, n. 250; Piontek, "Choir Duty and Conventual Mass in Religious Communities", HPR, XLIII (1943), 603.

choir obligation in their constitutions, rules or custom.[60]

A decision of the Commission for the Authentic Interpretation of the Code seemed to favor this latter view which would hold all societies bound. The Commission held that the conventual Mass, or the Mass corresponding to the Office of the day, must be celebrated not only in religious institutions of regulars and monastic nuns of solemn vows but also in houses of women religious who have simple vows, but who by virtue of constitutions approved by the Holy See are bound to choir duty.[61] This reply could have been in reference only to those religious institutions of women whose members are called nuns but who only profess simple vows; in fact this seems likely because of the fact that the question spoke only of "regulars and monastic nuns".[62]

The Apostolic Constitution, Spensa Christi, specifically stated "that among women consecrated to God, the Church deputes nuns alone (solas Moniales) for the public prayer which is offered to God in her name, either in choir (can. 610, § 1) or privately (Can. 610, § 3.)".[63] Only nuns (moniales) have the obligation of can. 610; the constitution holds them to the choir obligation whether they

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[60] Geyenechc, Quaestiones Canonicae de Iure Religiosorum, (2 Vols., Neapoli: M. D'Auria, 1954-1955), II, 52-53; Fanfani, op. cit., n. 393; Jone, op. cit., I, 537; Coronata, op. cit., I, n. 616; Siegle, Choral Obligation of Religious, (Romae: Officium Libri Catholici, 1954), p. 40.

[61] Comm. Cod. 20 May, 1923 -- AAS, XVI (1924) 113-114; cf. Bouscaren, Canon Law Digest, I, 321.

[62] Can. 488, n. 7. In fact almost no congregation of sisters is bound to the canonical Hours in choir; any choir obligation would involve at most the short Office, cf. Coronata, op. cit., I, n. 616.

[63] Art. V, § 1. Ecclesia ad orationem publicam, quae eius nomine sive in chore (c. 610, § 1.) sive privatim (c. 610, § 3.), Deo fungitur, solas Moniales inter mulieres Deo sacras deputat; easque ex regula ad normam suarum Constitutionum, huic orationi horis canonicis cotidie persolvendae graviter obstringit. -- Pius XII, const. Spensa Christi, 21 nov. 1950, -- AAS, XLIII (1951), 17.

are of simple or of solemn vows.[64] This specifically ruled out the possibility that Can. 610, ¶ 1, applied to Congregations of women of simple vows,[65] but the question of whether congregations of men were bound by this canon was still open.

The Constitution on the Sacred Liturgy, while keeping to the outline of the Code on this matter, was more specific in its ordinances.

> Art. 95. Communities subjected to the choral office are bound to celebrate the Office in choir every day in addition to the conventual Mass. In particular:
>
> a) Orders of canons, of monks and nuns, and of other regulars bound by law or constitutions to the choral Office must celebrate the entire Office.[66]

Because of the specific mention of orders and regulars it seems that only regulars are the subjects of the general law regarding the choral obligation of the divine Office. In his commentary on this section of the Constitution, Schmidt states that among religious who celebrate the divine Office solemnly, "are some congregations whose members are not regulars in the juridical sense, but who are bound not by law, but by their constitutions to the choir observance".[67]

The Constitution did not abrogate Can. 610, ¶ 1, but by interpreting the canon in the light of the Constitution it seems clear that in the matter of the

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[64] Art. V, ¶ 2. All monasteries of nuns and all individual nuns, professed of solemn or simple vows, everywhere, are bound to recite the divine Office in choir according to canon 610, ¶ 1, and their constitutions. Ibid. -- AAS, XLIII (1951), 17.

[65] This is denied by Creusen-Ellis, who claim that Art. V. ¶ 1, applies to congregations of women whose constitutions have been approved by the Holy See. However the term "solas moniales" -- nuns alone, seems to rule out this interpretation.

[66] Constitutio de Sacra Liturgia, Art. 95. Communitates choro obligatae, praeter Missam conventualem, tenentur Officium divinum cotidie in choro celebrare, et quidem:
a) totum Officium, Ordines Canonicorum, Monachorum, et Monialium, aliorumque Regularium ex iure vel constitutionibus choro adstrictorum. -- AAS, LVI (1964), 123.

[67] ". . . non ex iure tamen ex constitutionibus choro adstrictae sunt", Schmidt, "art. cit." Eph. Lit., LXXVIII (1964), 354. Frison says that only members of Orders, viz. regulars and nuns alone, are bound by the canon law to the choral recitation of the Office; Frison "De horis Canonicis Celebrandis", -- CpRM, XLIII (1964), 83.

choral celebration the general law only concerns itself with the institutes whose members profess solemn vows.

B. The members of the institute who are bound

The obligation binds all professed members of the institute, whether they are in perpetual or in temporary vows.[68] All authors hold that lay brothers (conversi) or lay sisters (conversae), even if they are in solemn vows, have no choral obligation, since their vocation is not geared to the choral duties.[69] Novices are not deemed to have this obligation since they are not religious in the strict sense and hence are not bound by the obligations of religious.[70]

The obligation according to general law is incumbent only on those houses which have at least four religious bound to choir and who are not lawfully impeded, or even on those houses where there are fewer, if the constitutions so prescribe. The obligation, then can concern any type of religious house, whether of full (formata) or only of inchoate (non-formata) formation,[71] erected in accordance with can. 497.[72]

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[68]Can. 578, n. 2 specifically mentions that those in temporary vows in institutes with the obligation of choir are bound to recite the divine Office in choir.

[69]Cf. Schaefer, op. cit., n. 1200; Fanfani, op. cit., n. 396; Berrutti, op. cit., III, p. 275; Brokhaus, Religious known as "Conversi", (Catholic University of America Canon Law Studies, n. 225: Washington, D.C., The Catholic University of America Press, 1945), p. 98.

[70]Regatillo, op. cit., I, n. 747; Toso, De Religiosis, p. 187; Can. 488, n. 7, does not mention novices under the term "religious".

[71]Can. 487, n. 5: A domus formata is a religious house in which there are at least six professed religious, of whom, if it is a clerical institute, four must be priests.

[72]Can. 497 requires the permission of the Holy See and consent of the local ordinary before a religious house or monastery of nuns can be erected. Fanfani states that houses in which religious dwell for any purpose, such as "hospitia, grangiae, collegia, villae" are excluded by the term "domus religiosa" and thus the obligation of choir does not reside there: op. cit., n. 396; cf. Schaefer, op. cit., n. 1201.

In order that the religious house be bound, there must be present in the house at the time scheduled for the celebration of the Office at least four religious who are bound to choir (or fewer if the constitutions so provide)[73] and who are not impeded. If less than four are present there is no obligation of choir. In counting the number present, only the members of the house who are bound to choir are to be counted; not the conversi nor the novices, nor any members of the institute who are attached to another house and are now visiting here.[74] So, if only three members of the house who are bound to choir are present and not impeded, and a novice, or a conversus or a visitor be also present at the time set for the celebration of the Office, the obligation ceases for that particular Hour. The obligation, however, is divisible; if the required number are present for a later hour, the community is bound to choir for this later Hour.[75]

Those who are lawfully impeded (actu legitime impediti) are not to be counted to make up the number four, even if they are present in the house at the time of the celebration of the Office. They may be impeded because of illness, or because of the performance of other lawful and necessary duties, e.g. the exercise of the sacred ministry, or the fulfillment of parochial or administrative duties.[76] Included

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[73] If the constitutions prescribe that less than four must fulfill the obligation, such a provision must be observed, but not by reason of ecclesiastical law, but because of the constitutions; the canon simply confirms the constitutions; Schaefer, op. cit., n. 1200.

[74] Goyeneche, Quaestiones, II, 40; 42-45; cf. Schaefer, op. cit., n. 1201; Jone, op. cit., I, 538.

[75] Goyeneche, Quaestiones, II, 40.

[76] Schaefer, op. cit., n. 1201.

also among the impeded are those who are dispensed.[77]

C. Those who may fulfill the obligation of the community

Whenever there are four professed religious of solemn or simple vows present, the obligation of choir exists for the community. The obligation is local and real, affecting the community; it directly binds the community, and also directly binds the superior of the house who is obliged to see that the obligation is satisfied.[78] The obligation affects the individual members only indirectly, and this includes the superior's personal obligation to be present at the celebration of the Office.

If four religious who are bound are present, the superior is deemed gravely bound to see that the choral obligation is fulfilled.[79] Obviously the four religious who are bound must celebrate the Office themselves, but if they do not celebrate it, the obligation continues, and this obligation rests directly on the community as a whole. The common opinion holds that even three of these four who are bound can fulfill the community's obligation.[80] It is commonly held that this obligation can be fulfilled by novices, even by four novices alone. It is felt that the novices are members of the community and hence, although not bound to the Office themselves, they are capable of fulfilling the obligation,

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[77] Can. 589, § 2, makes provision for religious teachers and students with regard to choral duties.

[78] Creusen-Ellis, op. cit., n. 298; Goyeneche, De Religiosis, n. 78; Schaefer, op. cit., n. 1202; Regatillo, op. cit., I, n. 747.

[79] Goyeneche, Quaestiones, II, 42.

[80] Schaefer, (op. cit., n. 1201), claimed that even two can fulfill the obligation, but this is denied by Goyeneche, (De Religiosis, n. 78). However, since the Code mentions the number four, there should be at least that number in choir; even though three can fulfill the obligation, it seems that the presence of less than four is a distortion of the law.

since it is primarily a community obligation.[81]

Though the obligation of choir binds the individual religious only indirectly, since the obligation primarily affects the community, as a member of the community he can be directly responsible, if, on account of his deliberate absence, the obligation of choir were not fulfilled because of a lack of numbers.

2. Obligation of Individual Recitation

> Can. 610, ¶ 3. In these same institutes of men or women (who are bound to choir duty), the solemnly professed members who have been absent from choir must recite the canonical Hours privately; however, the lay brothers or sisters (conversi) are exempted.[82]

This obligation refers only to institutes which have the duty of choir as an obligation, and thus it is concerned with houses of regulars and nuns who receive mention in Can. 610, ¶ 1. Only those members who are in solemn vows are bound by this obligation of reciting the Hours alone; conversi, even if they are in solemn vows, are specifically exempted. Members of Orders who are still only in simple vows are not bound by this law, even though their constitution may

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[81]Goyeneche, Quaestiones, II, 40; Larraona, CpRM., II (1921), p. 363; Schaefer, op. cit., n. 1203; Vermeersch-Creusen say this opinion is probable. - Epitome, I, n. 711; Piontek, "art. cit.", HPR, XLIII (1943), p. 604, note 10, O'Brien, Provincial Religious Superviser, (Catholic University of America Canon Law Studies, n. 258; Washington, D.C.: The Catholic University of America Press, 1947), p. 129; De Carlo, op. cit., n. 375; Blat holds the opposite opinion. He claims that novices cannot fulfill the obligation since they are never included under the term "religious" by the Code. - op. cit., II, n. 560. However, the Code does in fact equate novices with religiosi on certain occasions, especially in favorable matters; cf., e.g., cans. 567, ¶ 1; 615; cf. Abbo-Hannan, op. cit., I, 491.

[82]Can. 610, ¶ 3. In eisdem religionibus sive virorum sive mulierum, solemniter professi qui a choro abfuerant, debent, exceptis conversis, horas canonicas privatim recitare. Constitutio de Sacra Liturgia, Art. 95. c) "All members of the above communities (those bound to the Office in choir) who are in major Orders or who are solemnly professed, except for lay brothers, are bound to recite individually those canonical Hours which they do not pray in choir." The constitution uses the word soli rather than privatim which is used in the Code.

demand that they recite the Hours privately.[83] Similarly those Orders of nuns who profess only simple vows are not bound by this obligation of individual recitation of the general law.[84]

This obligation begins from the moment of solemn profession, following the same method of computing the Hours to which one is bound as is used by the subdeacon.[85] He or she is bound to recite the Hours which he or she should have recited in choir; this holds even if they are lawfully dispensed from choir, or even if the choir obligation ceased because of a lack of numbers or for any other reason,[86] e.g., if he misses Lauds in choir, and is present in choir for all the other Hours, he remains bound to recite Lauds by himself. The obligation is personal; he remains bound to the individual recitation whether he is in his own house or not.[87] Consequently fugitives from a religious institute[88] which comes under this canon continue

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[83] Cf. can. 578, n. 2.

[84] Const. Sponsa Christi, -- AAS, XLIII (1951), 17; trans. in Bouscaren, Digest, III, 235. Art. V, § 3: "According to Can. 610, § 3, nuns who were absent from choir, if they do not take solemn vows, are not strictly bound to recite the Hours privately, unless the Constitutions expressly provide otherwise, (c. 578, n. 2)"; but they are advised to do so.

[85] Cf. supra p.58, "When recitation has been anticipated, especially in choir with the community, one may admit that this is sufficient." - Creusen-Ellis, op. cit., n. 298.

[86] S.C.R. Instructio, 26. sept. 1964, Art. 78. a) Individual members of these communities (bound to choir) who are in major orders or are solemnly professed, except conversi, even if they are lawfully dispensed from choir, must recite individually each day the canonical Hours which they do not celebrate in choir. The question of the Hours to be recited is discussed in the next chapter, cf. pp. 97-101.

[87] Quaeritur utrum religiosi itinerantes, recitatione chorali divini Officii onerati, teneantur (etiam ut hospites in domo, quae non ad Officium divinum in choro recitandum obligatur) omnes Horas Canonicas privatim recitare? resp. Affirmative. Hi religiosi non eximuntur, ratione can. 14, 1 et 3, ab observatione legum personalium. Lex vero divini Officii, vi constitutionum religiosarum seu professionis sollemnis ac vi Ordinis sacri, est personalis. --Notitiae, I (1965), 186, responsio ad n. 78, a. de Instructione.

[88] Can. 644, § 3. A fugitive is one who leaves the religious house without the superior's permission, but with the intention of returning to the institute.

to be bound by this obligation, because they still are members of the house, though unlawfully absent from it.[89] An apostate from a religious house,[90] according to most authors is similarly bound.[91] But the apostate has incurred an automatic excommunication,[92] and in line with the writer's previous reasoning on the question of the excommunicated cleric[93] it seems that the apostate could no longer be bound to recite the canonical Hours. An excommunicated person cannot take part in divina officia.[94]

Secularized religious are specifically freed from the obligation[95] and so also is the religious who transfers to an institute which does not have the obligation of the choral Office in its constitutions or from custom.[96] It appears that the religious who has received an indult of exclaustration continues to be bound since he is obliged to observe the obligations arising from his profession in so far as they are compatible with his status.[97]

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[89] Can. 645, ¶ 1. Neither the apostate nor the fugitive is freed from the obligations of the rules or vows. . . Cf. Riesner, Apostates and Fugitives from Religious Houses, (Catholic University of America Canon Law Studies, n. 168; Washington D.C., The Catholic University of America Press, 1942), p. 114.

[90] A professed religious who unlawfully departs from his religious house with the intention of not returning or who after a lawful departure decides to withdraw himself from subjection to his superior, Cf. Can. 644, ¶ 1.

[91] Cf. Riesner, loc. cit.; Schaefer, op. cit., n. 1211; de Carlo, op. cit., n. 376; Biederlack-Führich, op. cit., p. 247.

[92] Can. 2385.

[93] Cf. supra p. 61.

[94] Can. 2259, ¶ 1.

[95] Can. 640, ¶ 1, n. 2; if he is in sacred Orders the obligation will continue from that title.

[96] Can. 635, n. 2; cf. Cerenata, op. cit., I, n. 617.

[97] Can. 639.

There is a dispute concerning the religious of perpetual vows who has been dismissed from the institute.[98] He continues to be bound by the obligation of his vows,[99] but the obligation to recite the divine Office arises from the rule or constitutions. The common opinion holds that by his dismissal a religious is freed from any obligations that do not pertain to the common vows.[100] Some would hold that he continues to be bound by the constitutions since his bond with the institute is not broken.[101] It would appear that it is inequitable to hold a religious who has been ejected from the community to be bound to observe the rules which those living the common life must observe, since he is forced to forego that common life. The more common opinion is favored by this writer, who regards the dismissed religious as freed from the obligation of reciting the divine Office while he remains in the world.

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[98] Dismissal can come ipso facto (c. 646), by decree of a superior (cc. 649-653), or by judicial sentence (cc. 654-660).

[99] Can. 669, ¶ 1.

[100] Schaefer, op. cit., n. 596; Berutti, op. cit., III, n. 177; Blat, op. cit., II, pars II-III, n. 560; Hiegel, The Juridical Bond of the Dismissed Religious in the Light of the Origin and Development of the Juridical Bond (New Orleans; Pontificia Universitas Gregoriana, 1954): "If in solemn vows, he (the dismissed religious) would be bound to private recitation of the divine office, only by reason of sacred orders." p. 20; Jone, op. cit., I, 590; Coronata, op. cit., I, n. 658.

[101] "The dismissed religious has the same obligation as he had when he lived within the community in regard to extra-choral recitation."--O'Leary. Religious Dismissed after Perpetual Profession, (Catholic University of America Canon Law Studies: Washington D.C., The Catholic University of America Press, 1943), n. 143, p. 92; Wernz-Vidal, De Religiosis., p. 492.

CHAPTER V

LITURGICAL LAWS GOVERNING THE DIVINE OFFICE

The divine Office is the public prayer of the Church, and as such is a part of the Liturgy of the Church.

> The liturgy is considered as an exercise of the priestly office of Jesus Christ. In the liturgy the sanctification of man is signified by signs perceptible to the senses, and is effected in a way which corresponds to each of these signs; in the liturgy the whole public worship is performed by the Mystical Body of Jesus Christ, that is by the Head and His members.
>
> From this it follows that every liturgical celebration, because it is an action of Christ the priest and of His Body which is the Church, is a sacred action surpassing all others; no other action of the Church can equal its efficacy by the same title and to the same degree.[1]

The Liturgy is "the whole public worship of the Mystical Body of the Christ, Head and members."[2] Because it is the action of Christ and His Church, the Liturgy is a sacred act, an act of greatest efficacy. The divine Office, as the public prayer of the Church,[3] is part of the Sacred Liturgy and thereby has this efficacious character which distinguishes it from non-liturgical prayer.[4]

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[1] Constitutio de Sacra Liturgia, Art. 7.

[2] Mediator Dei, --AAS, XXXIX (1947), 528-529.

[3] Constitutio de Sacra Liturgia, Art. 84, 98, 99.

[4] "The dignity and efficacy of liturgical prayer, even of ecclesiastical institution, is distinguished from the dignity and objective efficacy of a non-liturgical prayer by the fact that it exists and takes place by a title which belongs to no other prayer in the person and by the mandate and therefore with the proper grace of Christ Himself or of the Church; it does not only or principally depend on the personal grace of the individual member of the faithful". Vagaggini, "Commentarium de Constitutione de Sacra Liturgia", Eph. Lit., LXXVII, (1964), 240.

These basic points concerning the Sacred Liturgy must be borne in mind in any discussion of the law that governs the recitation of the divine Office. In treating the legal prescriptions, one could readily lose sight of the nature of the divine Office -- a liturgical prayer, and the first requirement of any prayer is its worthy offering. Prayer, of its very nature, involves two elements: internal and external. Obviously, the appropriate dispositions of the person praying are of primary importance in any prayer, but for the fulfillment of the public prayer of the Church the legal prescriptions should be carried out with as much faithfulness as possible reflecting the inner devotion. The matter of internal dispositions is left to its own proper field, here the legal prescriptions alone are dealt with.[5]

The formation and regulation of the recitation of the divine Office is governed by liturgical law. Liturgical law can be described as "the system of divine and ecclesiastical laws by which the liturgy of the Church, in the broad sense, is ordered".[6] This a wider description of liturgical law than would be admitted by some,[7] who only include "sacred rites and ceremonies" under the term. Ceremonies are the outward acts, sacred rites embrace both words and actions of the liturgy.[8] Not the rites and ceremonies themselves are dealt with here, but simply the laws governing their performance. The Code of Canon Law did not concern itself with the rites and ceremonies, but gave approval to the liturgical

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[5]Salmon, "La Reforme du Bréviaire selon la Constitution 'De Sacra Liturgia', du IIe Concile Vatican," L'Ami du Clergé, LXXII (1963), 758.

[6]Wernz-Vidal, Ius Canonicum, IV, n. 318.

[7]Van Hove, Commentarium Lovaniense in Codicem Iuris Canonici, Vol I, Tom. II, De Legibus Ecclesiasticis (Mechliniae, Romae, 1930), p. 10; Coronata, op. cit., I, n. 11.

[8]McManus, The Congregation of Sacred Rites (Catholic University of America Canon Law Studies, n. 352; Washington D.C.: The Catholic University of America Press, 1954), p. 5.

laws contained in the approved liturgical books.[9] The liturgical laws of the Roman rite will be the primary concern here, unless specific mention is made of other rites.

The liturgical laws governing the divine Office were to be found in the approved Breviaries and in the Collection of the Decrees of the Congregation of Rites.[10] These involve a great mass of material, which made an exact determination of liturgical law almost impossible, so that in 1960 Pope John XXIII authorized a new Code of Rubrics for the Roman Breviary and Missal in his Motu Proprio, Rubricarum Instructum.[11] The Code was promulgated by a Decree of the Congregation of Sacred Rites and became effective on January 1, 1961.[12] The new Code of Rubrics was very wide in its scope, it superseded all previous rubrics, and abrogated those decrees. The juridic consequences of the new Code of Rubrics were enumerated in the Motu Proprio. From January 1, 1961, this was the ruling law concerning the rubrics of the Roman Breviary and Missal; it specifically abrogated and replaced all the collections of rubrics prior to that time, and abrogated all decrees and responses to questions made by the

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[9] Can. 2. -- Codex, plerumque, nihil decernit de ritibus et caeremoniis quas liturgici libri, ab Ecclesia Latina probati, servandas praecipiunt in celebratione sacrosancti Missae sacrificii, in administratione Sacramentorum et Sacramentalium aliisque sacris peragendis. Quare omnes liturgicae leges vim suam retinent, nisi earum aliqua in Codice expresse corrigatur.

[10] Decreta Authentica Congregationis Sacrorum Rituum ex actis eiusdem collecta eiusque auctoritate promulgata sub auspiciis SS. Domini Nostri Leonis Papae XIII, (5 vols., Romae, 1898-1901). To these have been added two appendices, 1912-1927.

[11] Joannes XXIII, litt. ap., Rubricarum instructum, 25 iulii, 1960 --AAS, LII (1960) 591-595.

[12] S.R.C., decr., 26 iulii, 1960 --AAS, LII (1960), 596. ff.

Congregation of Rites that disagree with this Code.[13] "Further it revoked statutes, privileges, indults and customs of any kind, even centenary and immemorial, and those most special and worthy of individual mention, which are opposed to these rubrics."[14] This meant that anything in particular law that was contrary to this newly promulgated law, the Code of Rubrics, had to cease.[15]

The liturgical laws of the divine Office were further modified by the Constitution on the Sacred Liturgy of Vatican II, and by the Apostolic Letters and Instructions issued by the Congregation of Rites to implement the Constitution.[16] The study of the liturgical laws of the divine Office is based on the New Code of Rubrics and these Conciliar and post-Conciliar documents.

Article I. The Approved Books for the Recitation of the Divine Office

The satisfying of the obligation of the divine Office by Latin clerics in major Orders is stated in the most general terms: it is to be fulfilled according

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[13] "On January 1, 1961, the Rubricae generales of the Roman Missal and Breviary, as well as the Additiones et Variationes in the rubrics of the Roman Breviary according to the norm of the bull of our predecessor S. Pius X, Divino Afflatu, which have been prefixed to these books up to the present time, cease to have force. Likewise the general Decree of S. R. C. of March 23, 1955, De rubricis ad simpliciorem formam redigendis, taken into this new redaction of the rubrics, ceases to have force. Finally there are abrogated those decrees and responses to questions made by the same Sacred Congregation which do not agree with this new form of the rubrics." -- Rubricarum instructum --AAS., LII (1960), 594; translation in McManus, Handbook for the New Rubrics (Baltimore: Helicon Press, 1961), p. 5.

[14] Rubricarum Instructum, ibid., p. 595.

[15] Braga, "Commentarium in Novum Codicem Rubricarum", Ephem. Lit., LXXIV (1960), 223; McManus, "The New Code of Rubrics", Jurist, XXI (1961), 95.

[16] Constitutio de Sacra Liturgia; Motu Proprio, Sacram Liturgiam; S. R. C., Instructio ad exsecutionem Constitutionis de Sacra Liturgia Recte Ordinandam, "Inter Oecumenici", 26 sept. 1964 -- AAS, LVI (1964), 877 ff.

to the approved books.[17] The obligation of canons, benefice-holders, and religious is not even as specific as that, so they follow the rules for those in major Orders.[18] The divine Office for the majority of the Latin Church is contained in the Breviarium Romanum; "majority" is used because the breviary or the approved book that one uses is governed by the liturgical rite in which one is celebrating.

The largest rite in the Latin Church is the Roman rite. "Among the non-Roman rites of the West, the independent rites of Milan and Toledo are the most venerable. The former is the Ambrosian Rite and is used in many parishes of Milan, as well as in other dioceses of Northern Italy and Switzerland; the latter is called the Mozarabic Rite, and is now very little used. There are also certain lesser Roman rites, largely derived from medieval usages, in Braga and Lyons, and in various religious institutes. The latter include the monastic rites of the Benedictines, Cistercians, and Carthusians, and those of the Premonstratensians, Dominicans, and Carmelites".[19] In addition, there is the Slavonic rite which is used in Jugoslavia.[20]

The Roman Breviary as promulgated by Pope St. Pius V on July 9, 1568, by the Bull, Quod a Nobis,[21] with the variations introduced by Pope John XXIII in 1961 through the Motu Proprio, Rubricarum instructum,[22] obliges all members of the Latin rite. The only exceptions are churches or institutes that have received a proper breviary from the Holy See after July 9, 1568, and those churches and

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[17] Can. 135.

[18] Cans. 414, 610, 1475.

[19] McManus, Congregations of Sacred Rites, pp. 76-77; cf. Van Hove, De Legibus Ecclesiasticis, p. 12, nota 5.

[20] Loc. cit.

[21] Cf. supra, p. 40.

[22] Cf. supra, p. 79.

religious institutions which had been legitimately using a proper breviary for at least 200 years prior to July 9, 1568, provided that since that date they did not obtain permission to use the Roman Breviary.[23] Though everyone is obliged to use the breviary proper to his own rite, this cannot be considered a grave obligation, since the Rubrics allow one to fulfill one's obligation by participating in the Office in common or in choir according to a rite other than one's own.[24] For individual recitation, one is obliged to use one's proper breviary, but in view of the freedom concerning communal celebration it appears at least probable that one can fulfill one's obligation by reading from any approved breviary, though this would be contrary to the spirit of the Liturgy.

Article II. The Proper Calendar

> The Divine Office is to be recited according to one's own proper calendar, or failing that according to the calendar of the universal Church.[25]

1. Diocesan Clergy

Diocesan clergy are bound to follow the calendar of the church or oratory to which they are permanently assigned.[26] This means that a pastor, an assistant or a parochial vicar must follow the calendar of the parish church; those attached to a

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[23] Cf. Quod a Nobis, supra p. 40.

[24] Novus Rubricarum Codex, n. 157; cf. Constitutio de Sacra Liturgia, Art. 101, § 3.

[25] Novus Rubricarum Codex, n. 148; n. 49. The universal calendar is the calendar used by the universal Church, which is prefixed to the Roman Breviary and Missal. n. 50. A particular or proper calendar is diocesan or religious. It involves the inserting of particular feasts into the universal calendar.

[26] Ibid., n. 150.

non-parochial church or oratory must follow the calendar of that church or oratory. The diocesan calendar is made up of:

a) The feasts of the universal calendar;
b) The proper and indult feasts of the whole nation and of the whole province or region;
c) The proper and indult feasts of the whole diocese.[27]

The calendar of each church and oratory is made up of feasts of the diocesan calendar, and added to it are the proper and indult feasts of the locality and of the church or oratory.[28]

If a diocesan cleric is not permanently assigned to any church or oratory, of if he lives outside his diocese for a long time, he is given a choice. He may follow the calendar of his own diocese with the feasts of his place of residence added, or he may follow the calendar of the place where he now lives.[29] Beneficeholders are bound to follow the calendar of their church.[30]

2. Religious

Religious of either sex who are bound to choir follow the calendar of their religious house.[31] The calendar of a religious house is made up of:

i) the feasts of the universal calendar;
ii) the proper and indult feasts of the Order or Congregation;
iii) the proper and indult feasts of the church or oratory;
iv) a number of the feasts in the calendar of the diocese in which the house is situated.[32]

Whenever they take part in choir in another house they follow the calendar of that

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[27] Ibid., n. 52; cf. nn. 42, 43.

[28] Ibid., n. 53. b); cf. nn. 44, 45.

[29] Ibid., n. 150.

[30] Ibid., n. 149.

[31] Ibid., n. 151.

[32] Ibid., n. 56. b); cf. nn. 46, 45, 55, 57.

house for that Hour.[33] Religious always follow the calendar or their own house for individual recitation. The same rule holds for religious who are not bound to choir, if they have a proper calendar;[34] if they do not have a proper calendar, they follow the calendar of the church to which they are attached and add the proper and indult feasts of their Order or Congregation.[35]

3. Seminaries

The Code of Rubrics lays down special regulations concerning the calendar to be used for recitation in common in seminaries, but does not give any guidelines for individual recitation. A cleric in his own diocesan seminary should follow the calendar of the seminary church.[36] It would appear, then, that a diocesan cleric in major Orders is free to follow either the calendar of the seminary or his own diocesan calendar with the proper feasts of the seminary added, because he is apparently in the same position as the priest who is living outside the diocese for a long time.[37]

For recitation in common in diocesan seminaries, the calendar of the place is followed, with the addition of some proper feasts; for inter-diocesan, regional and international seminaries the universal calendar is used, with some proper feasts added.[38] When the divine Office is celebrated in choir or in common in interprovincial, national and international colleges or houses of religious, the proper calendar of the Order or Congregation is used, with the addition of some

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[33] Ibid., n. 151.

[34] Ibid., n. 152.

[35] Ibid., n. 153.

[36] Cf. ibid., n. 154.

[37] Cf. ibid., n. 150.

[38] Ibid., n. 155.

local feasts and some proper to the church.[39] Members of such houses should follow this same calendar in individual recitation.

4. Communal Recitation

Since the Office is, by its very nature, a community prayer,[40] the Rubrics make certain exceptions concerning the calendar with the intention of promoting more celebration in common.

> Any diocesan cleric or any religious of either sex, obliged under any title to recite the divine Office, who participates in the Office in choir or in common according to another calendar or rite other than his own, is thereby satisfying his obligation as far as this part of the Office is concerned.[41]

This points up the fact that the proper recitation of the Office is more important than the formal aspects attached to it. This emphasis on the communal aspect of the Church's public prayer is repeated and strengthened by the declarations of Vatican Council II. Clerics who do not have a choral obligation are strongly encouraged to recite the Office in common if at all possible, especially if they live together or have clergy gatherings.[42] In such instances the calendar to be followed is of secondary importance, but for communal celebration the calendar of the place would seem to be the one that is to be used.

The Rubrics of the Breviary specifically allow those who are obliged to recite the Office to fulfill the obligation of Vespers by participating in votive Vespers of any external solemnity, provided this Hour is celebrated correctly.[43] Again Vatican II asks pastors to schedule Vespers in common in their churches and to

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[39] Ibid., n. 156.

[40] McManus, Handbook for the New Rubrics, p. 77.

[41] Novus Rubricarum Codex, n. 157.

[42] Constitutio de Sacra Liturgia, art. 99.

[43] Novus Rubricarum Codex, n. 157.

encourage the laity to participate.[44] Because of the high place given to celebration in common, it seems that participation in the Office of the Dead satisfies the obligation for the Hours recited of that Office. This is an application of the principle, "Officium pro Officio".[45]

Article III. The Proper Time of the Hours

> By their very makeup the canonical Hours of the Divine Office are ordained to the sanctification of the various hours of the natural day. Hence, it is best, both for the real sanctification of the day and for the spiritually fruitful recitation of the Hours themselves, that each canonical Hour be recited at the time which most nearly approaches its own true time.[46]

This is the principle which underlies the reform of the Breviary in 1960. The divine Office is meant to sanctify the whole day, and a "liturgical day" is formed by the Hours of the Office.[47]

The history of the divine Office clearly shows that the sole purpose of the Office was the sanctification of the whole day by the offering of prayers to God at particular times of the day. The very names of the Hours signify the varying times at which they were to be recited.

The central theme of the Chapter on the divine Office in the Constitution on the Sacred Liturgy is that the Hours are meant to sanctify the day and the

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[44] Constitutio de Sacra Liturgia, Art. 100.

[45] Abbo, "Church Law and Church Life", The Priest, XIX (1963), 247.

[46] Novus Rubricarum Codex, n. 142.

[47] 4. A liturgical day is a day sanctified by liturgical services, especially the sacrifice of the Mass and the Church's public prayer, that is, the Divine Office. It runs from midnight to midnight. 5. Of itself, the celebration of a liturgical day runs from Matins through Compline. -- Ibid.

true time for each of the Hours should be observed.[48]

> Art. 89. a) By the venerable tradition of the universal Church, Lauds as morning prayer and Vespers as evening prayer are the two hinges on which the daily Office turns; hence they are to be considered as the chief Hours and are to be celebrated as such.[49]

The governing principle for the recitation of the Office is the celebration of Lauds as the morning prayer and Vespers as the evening prayer. Prior to Vatican II it was already obligatory for those who were bound to choir to always celebrate Lauds in the morning only and Vespers in the evening, and it was recommended, but not obligatory, in individual recitation.[50]

Compline is to be the last prayer of the day.[51] This raises the question; what do we mean by "day" in this context of the divine Office? The Rubrics state that the day stretches from midnight to midnight,[52] and this can be calculated from the sun or from the standard time of the locality.[53]

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[48] "The divine Office is devised so that the whole course of the day and night is made holy by the praises of God". Constitutio de Sacra Liturgia, Art. 84. "The traditional sequence of the Hours is to be restored so that once again they may be genuinely related to the time of day when they are prayed, as far as this may be possible". Ibid., Art. 88; cf. Acts. 89, 94; cf. Schmidt, "De Cursu Horae" Ephm. Lit., LXXVIII (1964), 342.

[49] Constitutio de Sacra Liturgia, Art. 89. a).

[50] "Since Lauds are a morning prayer, they are said in the early morning in choir or in common, and this rule may be fittingly observed in individual recitation . . . Even in Lent and Passiontide, Vespers are said in the hours after noon in choir and in common . . . it is fitting that (these) rules be observed in individual recitation". -- Novus Rubricarum Codex, nn. 145-146.

[51] Constitutio de Sacra Liturgia, Art. 89. b). The Rubrics strongly recommended that Compline be the final prayer before retiring, but did not command it. -- Novus Rubricarum Codex, n. 147.

[52] Novus Rubricarum Codex, n. 4.

[53] Cf. Can. 33.

If one retires after midnight, can one fulfill the obligation by waiting until then to recite Compline? In line with a strict interpretation of the definition of a "day" in the Rubrics or in the Code of Canon Law[54] it appears that one could not fulfill the obligation, for the Office is to be completed by midnight. However, such an interpretation seems to be contrary to the concept of Compline as a night prayer. "Modern conditions of daily life must be taken into account in the relating of the Office to the proper time of the day".[55] "If it (compline) is recited at its proper time (the end of the day), its pastoral usefulness is increased, for nowadays people retire later so that there is a longer interval between Vespers and Compline".[56] It seems, then, that it is most proper that the day be judged by the life of the priest, not according to the strict computation of midnight, since midnight may not be the end of the day for him. Compline should be recited at the end of the day by this particular person, whatever time that may happen to be.

Prime is the secondary morning prayer; Terce, Sext and None belong properly to midmorning, noon and midafternoon respectively.[57] These Hours should be recited in choir at times corresponding to these times of the day.[58] In the reform of the Office there will be a distinction between Matins for choir and for individual recitation. In choir, it will be retained as a nocturnal prayer, thus it would be the first prayer of the day. For individual recitation, it will be set up as

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[54] Can. 32. - § 1. Dies constat 24 horis continuo supputandis a media nocte.

[55] Constitutio de Sacra Liturgia, Art. 88.

[56] Schmidt, "De Cursu Horae", Ephem. Lit., LXXVIII (1964), 343.

[57] McManus, Handbook for the New Rubrics, p. 91.

[58] For those not bound to choir, Prime is suppressed, and one is free to choose one of the minor Hours to suit the time of recitation. Ap. litt., Sacram Liturgiam, n. VI; Constitutio de Sacra Liturgia, Art. 89. d) and e).

a prayer that may be recited at any hour of the day.[59] Since this revision will be adapted to the pastoral ministry, it seems that one is now free to say Matins at any time of the day.[60] There is one question concerning the time of fulfilling the choral obligation: If the superior forsees that at least four members of the house who are bound to choir will not be present at the scheduled time for the Hour, is the superior of the House obliged to postpone choir to a time, within the time allowed by the Rubrics, when he knows at least four will be present? It is admitted that the choir obligation for the house ceases if less than four who are bound are not present at the time of choir. Some would say that the superior should transfer the time of choir, if he can conveniently do so.[61] To insist on changing the time could be regarded as offending against community regularity, and in such a case would not be advised.[62] It can be concluded that the superior is not obliged to change the scheduled time, but if it can be conveniently done he is encouraged to see that choir is fulfilled.[63]

1. The Time of Individual Recitation

The law obliges one "to recite the divine Office completely every day".[64] This was interpreted in the Code of Rubrics.

> 143. To satisfy the obligation of reciting the Divine Office, it is sufficient that all the canonical Hours be recited within the space of twenty four hours of the day.[65]

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[59] Constitutio de Sacra Liturgia, Art. 89. c).

[60] Cf. Schmidt, "art. cit.", Ibid., p. 345.

[61] Jone says that the superior is obliged to change the time -- op. cit., I, 538; Goyeneche, Quaestiones, II, 45-46; Fanfani, op. cit., n. 396.

[62] O'Brien, The Provincial Religious Superior, p. 130.

[63] Cf. Coronata, op. cit., I, n. 616.

[64] Can. 135.

[65] N. 143.

This gives one the greatest possible latitude, it means that one can fulfill the obligation by reciting the Hours in a single session. In fact, one could fulfill the obligations of two days at one sitting, by reading the Office of the two days consecutively through midnight, or by even using different computations of time for the two days. Obviously this is completely contrary to the spirit of the obligation, for it destroys the notion of sanctifying the whole day.

> That the day may be truly sanctified, and that the Hours themselves may be recited with spiritual advantage, it is best that each of them be prayed at a time which most closely corresponds to its true canonical time.[66]

Does this article of the Constitution abrogate section 143, given above, of Code of Rubrics?[67]

The Constitution does not give the answer, but it certainly points in the direction of one. The primary principle governing the Office is that the Hours be recited at their proper time. The suppression of Prime and the freedom to choose a minor Hour that corresponds to the time of recitation highlight this particular principle.[68] The hinges of the Office are "Lauds as the morning prayer

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[66] Constitutio de Sacra Liturgia, Art. 94.

[67] "Article 94 raises the question whether this law in the Code of Rubrics (n. 143), which is in accordance with legitimate practice up to now, has been suppressed by the promulgation of the Constitution on the Sacred Liturgy or not. It is obvious that there is still the obligation of reciting integrally the canonical Hours every day, but if the observance of the sequence of the hours is urged a new mentality is created. For example, if one does not recite Lauds for any reason in the morning, is he obliged to satisfy his obligation to recite Lauds after noon? If one retires at 2 AM. is he obliged to recite Compline of the preceding natural day if he has not recited it before midnight?" -- Schmidt, "De Obligatione Officii Divini", Ephem Lit., LXXVIII (1964), 351.

[68] Cf. Constitutio de Sacra Liturgia, Art. 89; Sacram Liturgiam, VI.

and Vespers as the evening prayer",[69] and in its reference to Lauds and Vespers the Constitution on the Sacred Liturgy draws no distinction between choral and individual recitation. Further the Council recognized that the life of the modern clergy, especially those engaged in apostolic work, is greatly changed since the beginning of the century.[70]

The history of the Hours shows that they were developed to be recited at particular times of the day, and not simply as prayers for any time of the day. The obligation itself arose, because the monastic rules demanded that the monks celebrate the Office at the stated times; a custom arose whereby the secular clergy attended the Hours which the monks celebrated in the church. The Office originally was celebrated only in church, and consequently only at the proper times of the Hours. In fact the obligation which bound individuals who were absent from choir was an obligation to pray in the place where they were at the time that the Hour was being celebrated in choir.[71]

The obligation of individual recitation is a personal obligation.[72] The obligation is not attached to the day, but to the person in virtue of his orders or profession. The obligation is not indivisible; hence one is not bound to recite either the whole Office or none at all; one can be excused from part of the Office and still be bound to the rest. The obligation is divisible.[73] That the obligation

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[69] Constitutio de Sacra Liturgia, Art. 89. a).

[70] Ibid., Art. 88.

[71] The Long Rules of St. Basil, Q. 37, cf. supra, p.40; Rule of St. Benedict, supra, Chap. 50, p.8.

[72] "Lex vero divini Officii, vi constitutionum religiosarum seu professionis sollemnis ac vi Ordinis sacri, est personalis." Responsio re. n. 76, a) de Instructione, in Notitiae, I (1965), p. 186; supra, p. 74.

[73] Cf. Goyeneche, Quaestiones, II, 40; Schaefer, op. cit., n. 1203; De Religiosis, p. 276.

is attached to the time of day rather than to the day itself as a whole is reflected in the teaching that a subdeacon is obliged to the recitation of only those Hours which occur after his ordination. The same applies to the solemnly professed religious.[74]

The subdeacon is not bound to recite the complete Office, but he likewise is not freed from the later Hours on his ordination day. If the emphasis were on integrity or completeness, it would seem that he should be bound to the complete Office or to none at all. It seems that the common teaching suggests that the obligation is connected with the proper time of recitation rather than with the day as a whole.

The divine Office is properly a prayer for choir. The obligation originally applied only to choral recitation. Individual recitation was, at first, merely a concession. The obligation of choral celebration on a community ceases when the time of celebration as prescribed in the rubrics is past.[75] No such concession was granted by the commentators in the matter of individual recitation.

The Office is devised "to sanctify the whole course of the day".[76] The obligation to recite the divine Office is an obligation to offer the Church's public prayer and thus to sanctify the whole day. The spirit of the obligation is completely defeated if one fulfills this obligation by reciting the complete Office at one time.[77] Yet according to the rubrics one can fulfill the obligation in such

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[74] Cappello, De Sacra Ordinatione, n. 615; Fanfani, op. cit., n. 395.

[75] Goyeneche, De Religiosis, p. 160, nota 10; Schaefer, op. cit., n. 1203.

[76] Novus Rubricarum Codex, n. 142. Constitutio de Sacra Liturgia, Art. 84.

[77] Cf. Braga, "In Novum Codicem Rubricarum", p. 239.

a way.[78] In contrast, the Constitution on the Sacred Liturgy insisted that the Hours be recited at their proper tiem.[79] To make this more convenient, it revised the sequence of the Hours; with Lauds and Vespers as the hinges; it allows the choice of a Minor Hour to suit the time of recitation, and Matins, the longest Hour, is to be adapted so as to be a prayer for any time of the day; Compline is the night prayer.[80] And even here, out of respect for modern apostolic requirements, since it foresees that there will at times be difficulties in preserving this sequence, it provides that "appropriate instances are to be defined by the rubrics in which a liturgical service may be substituted for the divine Office".[81] The Constitution emphasizes that a communal celebration is to be preferred and promoted; communal celebration involves adhering to the proper time of the Hours.[82]

The obligation itself is not something that is unaffected by the rethinking and the revision of the divine Office; the obligation cannot be divorced from the purpose of the Office. The Council clearly stated that the purpose of the divine Office is "to sanctify the whole day".[83] "The sanctification of the natural day is not done globally, once in the day, but in its individual parts. At different times of the day, there are different needs, needs of the priest himself, of the faithful, of the whole Church. This is the very purpose to which public prayer is directed."[84] According to the mind of the Council, the obligation of the divine

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[78] Novus Rubricarum Codex, n. 143.

[79] Arts. 84, 88, 89, 94.

[80] Art. 89; Sacram Liturgiam, VI.

[81] Art. 97.

[82] Cf. Constitutio, Arts. 96, 99, 100, 101. ¶ 3.

[83] Art. 84.

[84] Braga, "In Novum Codicem Rubricarum", p. 239.

Office is an obligation to sanctify the whole day by reciting the Church's public prayer at the time most closely corresponding to the true canonical time of the Hour.

The practical implications of this are that if the priest who is obliged to an individual recitation is legitimately impeded from reciting Lauds in the morning (before noon), he would not be obliged to recite Lauds in the afternoon, e.g., on a Sunday his Mass schedule might prevent him from reciting Lauds (this would seem to be a situation envisaged in Art 97 of the Constitution), or he has to travel a long distance in the morning to a conference, on parish business. The same principle applies to Vespers as an evening prayer. The causes excusing from the minor Hours would have to be great, because one is free to choose any that suits the time at which one is free; similarly with Matins, since it can be recited at any time of day.

If one follows this reasoning one could be obliged to recite Compline after midnight of the natural day. This reasoning has been based on achieving the ideal of using the Hours to sanctify the different parts of the whole day. In this system Compline should be the last prayer of the individual's day. If he has followed this system of computing the time of recitation, he must be consistent, hence if he retires at 2.00 a.m. and has not yet recited Compline, he would be bound to recite Compline at that time.[85]

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[85]In the reasoning given above, if he was unable to recite Lauds in the morning, an individual could regard himself free from the obligation. By using this method of computing the time of the Hours (the time most closely corresponding to the Hours), he must be consistent. Even though midnight has passed, midnight is not the end of the day for him.

2. Anticipation

Prior to the promulgation of the new rubrics in 1960, there were various Orders and associations enjoying numerous privileges allowing their members to fulfill their obligation for certain Hours by reciting them on the preceding day. This is the privilege of anticipation.[86] The Rubrics allow the anticipation of Matins for a good reason after 2 p.m. of the preceding day.[87]

Because of the Council's statement that Matins is to be an Hour for any time of the day, it appears that this privilege of anticipation continues in force, though in choir, at least, Matins should be celebrated as a nocturnal Hour.[88] In view of the Council's thinking, there should be a serious cause to justify anticipation, and obviously Lauds may never be anticipated. There was a dispute whether the privilege enjoyed by some of anticipating Lauds was abolished in January, 1961. It seemed that this privilege of anticipating Lauds was included under the abolition of all privileges, statutes, and customs contrary to the Code of Rubrics.[89] Any doubts on the matter were definitively settled when in a declaration the Congregation of Rites affirmed that the anticipation of Lauds was no longer

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[86] Cf. Cappello, De Ordine, nn. 627 - 629.

[87] For a good reason, Matins may be anticipated in the afternoon or evening hours of the preceding day, but not before two o'clock in the afternoon. -- Novus Codex Rubricarum, n. 144. This anticipation of Matins can take place even before the recitation of Compline -- n. 147.

[88] Constitutio de Sacra Liturgia, Art. 89, c).

[89] Joannes XXIII, litt. ap., Rubricarum instructum, n. 1.

permissible.[90]

Article IV. The Proper Place

The Rubrics do not specify any particular place for the celebration of the Office. Communities which are bound to choir should recite the Office in the choir of the church or the public or semi-public oratory.[91] A decree of the Congregation of Rites issued to the Friars Minor, and thus binding all regulars, stated that the obligation cannot be fulfilled in a private Oratory,[92] but can be fulfilled if the oratory is connected with the church by means of a window or opening.[93]

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[90] S.R.C., Declaratio. Cum circa interpretationem n. 144 et 145; novi Codicis Rubricarum dubium ortum sit utrum scilicet, post diem 1um ianuari anni 1961, Laudes inde a tempore postmeridiano diei praecedentis, in recitatione a solo, facta, adhuc liceat anticipari, haec S.R.C., ne in re quae directe ad publicam Ecclesiae praecationem pertinet, remaneat incertitudo necessarium esse duxit declarare:
1) N. 144 proprie et exclusive permittitur anticipatio Matutini, sive in choro, sive in communi, aut a solo.
2) N. 145 proprie et exclusive statuitur, recitationem Laudum, in choro, et in communi, fieri posse tantummodo primo mane, id est, absque ulla anticipatione, recitationem vero a solo, quae similiter anticipari non licet, convenienter fieri eodem matutino tempore, --
Romae die 28 decembris 1960 -- L'Osservatore Romano, dec 30, 1960. Regatillo claimed that the privileges of anticipating Lauds continued since this decree was not published in the Acta Apostolicae Sedis, the official organ of the Church, and hence did not have universal binding force. -- Sal Terrae, 49 (1961), 498-502. However the Constitution on the Sacred Liturgy seems to rule out any validity concerning anticipation of Lauds.

[91] Cf. Can. 1188 concerning oratories.

[92] Can. 1188. § 2, n. 3.

[93] S.R.C., Decretum, 12 decembris, 1879: 1) An Fratres Minores praecepto chori satisfaciant Officium divinum recitando in oratorio privato conventus ab ecclesia separato? Quod si negative, 2) An praecepto chori satisfaciant, Officium divinum recitando in oratorio privato conventus quod aperto muro vel accessu ecclesiae iungitur? 3) An Superior localis dispensare possit, ut eius arbitrio ex causa veluti ob nimium frigus seu calorem, per aliquot menses Officium divinum recitetur extra ecclesiam in oratorio conventus vel sacristia?
Resp: Ad I negative. Ad II Affirmative, juxta modum; nimirum: ad Episcopum, qui tamquam Sedis Apostolicae delegatus visitet locum, et videat, an sit decens et cum ecclesia communicet. Ad III, Provisum in primo. -- Decreta Authentica S.R.C., n. 3506.

Even if this entrance is closed because of the cold, or by accident, the obligation is still fulfilled.[94] However, strictly considered, the obligation can be fulfilled validly in any place of the house. There is no designation of place for individual recitation.

Article V. The Hours to be Recited

> The canonical Hours of the Roman Breviary are: Matins, Lauds, Prime, Terce, Sext, None, Vespers and Compline.[95]

The Council decreed that Prime should be omitted in the latter to be revised Breviary. In individual recitation one could choose one of the minor Hours to suit the time of recitation. These concessions were put into effect almost immediately.

> Although the divine Office has not yet been revised in accord with article 89, nevertheless we now grant the faculty, to those who are not bound by the obligation of choir (qui chori obligatione non astringuntur), that, at the end of the vacatio legis (February 16, 1964), they may omit the Hour of Prime, and may choose from among the other minor Hours the one that best suits the time of day.[96]

This obviously granted the concession of omitting Prime and two of the minor Hours to all those who were bound to an individual recitation, and who did not have an obligation of choir.[97] There was a problem concerning those who have an obligation of choir and who must by individual recitation make up the Hours which

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[94] Goyeneche, Quaestiones, II, 37-39.

[95] Novus Rubricarum Codex, n. 138.

[96] Quamvis divini Officii ordo nondum sit, iuxta art. 89, recognitus et instauratus, tamen iam nunc iis qui chori obligatione non astringuntur facultatem facimus, ut, cessante legis vacatione, Horam Primam omittere possint, et ex ceteris Horis minoribus illam eligere, quae diei momento magis congruat. -- Paulus VI, litt. ap. 25 ian 1964, Sacram Liturgiam, n. VI -- AAS, LVI (1964), 142.

[97] Braga, "Commentarium in Litt. Ap., Sacram Liturgiam", Ephem. Lit. LXXVIII, (1964), 404; Frison, "art. cit.", CpRM, XLIII (1964), 86-87.

they missed in choir.[98] The problem was caused mainly because three different versions of the Motu Proprio, Sacram Liturgiam were published. In chronological order they are: the Latin text in L'Osservatore Romano,[99] the Italian translation in the same edition,[100] and finally the official version in Latin which was published in the Acta Apostolicae Sedis.[101]

The first text in L'Osservatore Romano, "in recitatione extra chorum" could be taken to refer also to a religious who in fact is bound to a recitation in choir, but who celebrates outside choir because he was dispensed or excused from choir. In such an instance, he would not be bound to recite Prime and would be free to choose just one of the minor Hours in recitation outside choir. The official version in AAS used different phraseology seemingly to offset the ambiguity of the first version. The commentators on this Motu Proprio felt that there was no case for an interpretation of the official text which would say that the religious enjoyed the same faculty regarding individual recitation as the cleric minus the choir obligation. They held that the religious who had a choral obligation and recited the Office alone was bound to recite all the

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[98] Cf. Can. 610 § 3.

[99] L'Osservatore Romano, January 29, 1964, p. 1.

[100] L'Oss. Rom., January 31, 1966, p. 1.

[101] Translations of both versions, and a comparison highlighting the differences is given in "Changes in the Motu Proprio, Sacram Liturgiam", -- Jurist, XXIV (1964), 242-243. The L'Osservatore Romano version of n. VI read: "Although the divine Office has not yet been revised in accord with article 89, nevertheless we now grant the faculty, to those who are bound by the obligation of reciting it (qui illius recitandi obligatione astringuntur), that at the end of the vacatio legis, in recitation outside of choir (in recitatione quae fiat extra chorum) they may omit the Hour of Prime and choose from among the other minor Hours the one that best suits the time of day."; cf. Claver Smith, "The Motu Proprio Sacram Liturgiam", -- Worship, XXXVIII (1963 - 1964), 301 - 303.

Hours that he missed in choir, including Prime and all the minor Hours.[102] This view is substantiated by the Instruction on the Implementation of the Constitution on the Sacred Liturgy which seemed to rule that those who are subject to a choir obligation can not omit Prime or any of the minor Hours.

> Until the restoration of the divine Office is completed:
> a) Communities of canons, monks, nuns, and other regulars or religious bound to choir by law or constitution must celebrate the entire divine Office in choir, in addition to the conventual Mass.
> Individual members of these communities who are in major orders or are solemnly professed, except for the conversi, even if they are lawfully dispensed from choir, must recite individually each day the canonical Hours which they do not celebrate in choir.[103]

"The words 'entire Office' (totum Officium), mean the Office as it now is, Prime included, although this Hour will be suppressed in the final general reform of the Office".[104] So the religious who are bound to choir, and are in major Orders or solemnly professed (except conversi) must recite all the Hours of the Office either in choir or individually.

Because the reform of the divine Office is to be geared to the demands of the apostolate in modern conditions, special concessions were made for mission lands.

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[102] Braga, "Commentarium in Litt. Ap., 'Sacram Liturgiam'", p. 404; Frison, "art. cit.", pp. 88-90; Bugnini, L'Osservatore Romano, 2-3 martii, 1964, p. 2. They all imply that the Council Fathers did not intend any change in the choral obligation or in the choral Office. This is evidenced in Schmidt's commentary on the Constitution on the Liturgy, when he states that Article 89 (concerning the revision of the Hours of the Office) does not apply to members of communities obliged to choir. "De Obligatione Officii Divini", Ephem. Lit., LXVIII (1964), 354.

[103] S.R.C., Instructio ad exsecutionem Constitutionis de Sacra Liturgia Recte Ordinanda, Inter Oecumenici, n. 78., 26 septembris 1964, -- AAS, LVI (1964), 895.

[104] Braga, "Commentarium in Instr., 'Inter Oecumenici'" -- Ephem. Lit., LXXVIII (1964), 490.

> In mission lands, however, while preserving the religious or capitular choral discipline established by law, religious or members of chapters who are lawfully absent from choir by reason of the pastoral ministry may enjoy the concession made in the apostolic letter Sacram Liturgiam, n. VI, with the permission of the local ordinary, but not of the vicar general or delegate.[105]

The ordinary of the place can grant to the religious missionary the faculty of omitting Prime and choosing one of the minor Hours when he is legitimately absent from choir, and the absence is caused by his pastoral ministry. It is noted that only the ordinary of the place, Ordinarius Loci,[106] with the exception of the vicar general or the ordinary's delegate, can grant this faculty. The ordinary of the place is the one on whom all the clergy, secular and religious, depend in reference to their pastoral ministry. The major superior, since he is not an Ordinarius loci,[107] cannot grant this faculty.[108]

The cathedral and collegiate chapters must fulfill the parts to which they are bound in choir. Since canons, in the present day, are normally engaged in parochial work, whenever they celebrate alone they are not only bound to recite those Hours which all clerics in major Orders are obliged to recite, but in addition those Hours which are celebrated in choir by the chapter.[109]

In June, 1965, a Decree of the Consilium for the implementation of the Constitution on the Sacred Liturgy stated that the Holy Father had conceded the faculty whereby members of religious communities who have a choir obligation (choro adstrictam) can be exempted from the obligation of the Hour of Prime in

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[105] Inter Oecumenici, n. 78. c).

[106] Cf. Can. 198.

[107] Can. 198. § 2.

[108] Cf. Braga, "Commentarium in 'Inter Oecumenici'," p. 492.

[109] Inter Oecumenici, n. 78. b).

the recitation of the divine Office either in choir or outside of choir. The execution of this indult is left to the prudent judgement of the supreme moderator of the religious institute.[110]

Summary: 1. Religious who are bound to choir are obliged to recite the entire divine Office either in choir or individually.

2. Those who are obliged to recite the Office by reason of major Orders must recite Matins, Lauds, one of the minor Hours, Vespers and Compline.

3. Canons must celebrate in choir all the Hours to which the chapter is bound; outside of choir a canon is bound to recite all the Hours incumbent on those who are in major Orders, and in addition to those Hours to which his chapter is bound.

4. In mission countries, ordinaries of the place (vicars general excepted) can grant to religious and canons who are bound to choir the faculty of reciting the same Hours as those who are in major Orders, whenever such religious or canons are absent from choir on parochial work.

Article VI. The Language of the Divine Office

Art. 101, § 1. In accordance with the centuries-old tradition of the Latin rite, the Latin language is to be retained by clerics in reciting the divine Office. But in individual cases the Ordinary has the power of granting the use of the vernacular -- translation to those clerics for whom the use of Latin constitutes a grave obstacle to their praying the Office properly. The vernacular version must be one that is drawn up according to the provision of Art. 36.

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[110] Decreta, quibus facultas datur omittendi Horam Primae die iunii 1965 (Prot. n. 43991 65); in Notitiae, I (1965), 272.

> § 2. The competent superior has the power to grant the use of the vernacular in the celebration of the divine Office, even in choir, to nuns and to members of institutes dedicated to acquiring perfection, both men who are not clerics and women. The version, however, must be an approved one.[111]

The Council stated the general principle on the matter of the language to be used in the recitation of the Office. The Latin language is the language of the Office, but exceptions are allowed. This is in keeping with the broad principle on the language of the Latin liturgy which the Council already stated: "Particular law remaining in force, the use of the Latin language is to be preserved in the Latin rites",. . . but the use of the mother tongue in the liturgy may be extended".[112] Except in the case of nuns, the Constitution made no concession for the vernacular in choral celebration.

1. Individual Recitation

The Constitution concedes the power to the ordinary to grant the use of the vernacular translation to those clerics for whom the use of Latin constitutes a grave obstacle to their praying the Office properly. This refers to both the religious and the local ordinary, and this authority is now extended to include also superiors of non-exempt communities.[113] This facility of using the vernacular

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[111] Constitutio de Sacra Liturgia, Art. 101 § 1. Iuxta saecularem traditionem ritus latini, in Officio divino lingua latina clericis servanda est, facta tamen Ordinario potestate usum versionis vernaculae ad normam art. 36 confectae concedendi, singulis pro casibus, iis clericis, quibus usus linguae grave impedimentum est quominus Officium debite persolvant.

§ 2. Monialibus, necnon sodalibus, sive viris non clericis sive mulieribus, Institutorum statuum perfectionis, in Officio divino, etiam in choro celebrando, concedi potest a Superiore competente ut lingua vernacula utantur, dummodo versio approbata sit.

[112] Constitutio de Sacra Liturgia, art. 36, § 1 and 2.

[113] Inter Oecumenici, n. 86; The faculty granted to the ordinary of conceding the use of the vernacular language, in individual cases, to those clerics for whom the use of Latin constitutes a grave impediment to their praying the Office properly, is extended also to the major superiors of non-exempt clerical religious institutes and of societies of clerics who live the common life without vows.

may not be granted in a general way to a community or a diocese, but only "in individual cases" or per modum actus, and then the reason must be because the Latin language constitutes a "grave obstacle" (grave impedimentum) to making the Office a prayer.

The ordinary is the one who must judge whether Latin constitutes a grave obstacle. In this matter he is to use the greatest magnaminity[114] in granting the concession. He is to weigh the physical, moral, intellectual and spiritual condition of the petitioner in judging the presence of a grave obstacle; the reason for allowing the use of the vernacular is to enable the grantee to recite the Office more devoutly (debite).[115]

This indicates that a lack of knowledge of Latin is not the only condition on which this faculty can be granted. The condition stated in the Constitution, that the use of Latin constitutes a grave obstacle to their praying the Office properly (usus linguae latinae grave impedimentum est quominus Officium debite persolvant), is much wider in its ramifications. A person may understand Latin, and yet it may hinder his making the Office a true prayer. "Debite" implies more than a simple understanding or pronouncing of the words properly. Since Latin is a dead language, and it is only used by a very few in the same way as a living language, one is not normally relaxed in its use, even though one can fully understand

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[114] Braga, "Commentarium in 'Inter Oecumenici'," p. 497.

[115] Inter Oecumenici, n. 87, "The grave obstacle which is required for the grant of the preceding concession must be weighed by taking into consideration the physical, moral, intellectual and spiritual condition of the petitioner. Nevertheless, this faculty, which is granted solely to make the recitation of the divine Office easier and more devout, is in no way intended to detract from the obligation upon priests of the Latin rite to learn the Latin language."

everything that is said or read.[116] Whenever one can duly assert that the Latin language prevents one from making the Office a real prayer, then there is present a "grave impedimentum" to a devout fulfillment of one's obligation and this is sufficient cause for the grant of the faculty that allows the use of the vernacular.

Even though a cleric may not have the faculty of using the vernacular, he may fulfill his obligation by using a vernacular version if he celebrates the Office in common with religious who are allowed to use the vernacular or with a group of the faithful.[117] A group of the faithful can be as small as two or three persons, as is indicated by the Rubrics of the Roman Breviary, which defines recitation in common as recitation by even two or three persons only.[118]

The Constitution allowed the competent superior to grant nuns (moniales) the right to use the vernacular in the divine Office, whether in choir or alone.[119] However a much wider concession is granted by an Instruction of the Congregation of Rites:

> Nuns who are not present at the choral recitation may use the vernacular language in the individual recitation of the divine Office.[120]

This gave nuns the faculty without any restriction, and without the intervention of any authority.

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[116] Clifford Howell, "Divine Office in English", Worship. XXXVIII(1963-1964) 281-282. Howell very cleverly reduces to the absurd the suggestion that a competence in Latin automatically denies one the right to obtain the faculty of using the vernacular, because in such a case competence in Latin becomes a burden, since it deprives one of the opportunity of making the Office the real prayer that it is supposed to be, whereas the one who is incompetent in Latin is perfectly free to make the Office a real prayer by receiving permission to use the vernacular.

[117] Constitutio de Sacra Liturgia, Art. 101, § 3.

[118] Novus Rubricarum Codex, n. 141; cf. Gordon, "Constitutio de Sacra Liturgia et Canones 1256 - 1257", Periodica, LIV (1965), 545.

[119] Constitutio de Sacra Liturgia, Art. 101, § 2.

[120] S.R.C. Instructio de lingua adhibenda in Officio et Missa apud Religiosos, 23 nov. 1965, n. 13, -- AAS, LVII (1965), 1012.

2. Choral Recitation

> In the celebration of the divine Office in choir, clerics are bound to retain the Latin language.[121]

This confirmed the principle of the Constitution[122] and is in accordance with the obvious effort of the Council to preserve the traditional choral Office. A great number of petitions were sent to the Holy See seeking permission for the use of the vernacular in choir, and for clarification of the law of the Constitution and the Instruction, Inter Oecumenici.[123]

The Instruction concerning the language for the divine Office and the Conventual or Community Mass of Religious was issued on 23 November, 1965, by the S. Congregation of Rites, the S. Congregation of Religious and the Consilium for the Implementation of the Constitution on the Sacred Liturgy. The instruction came into force on February 6, 1966.[124] This instruction only dealt with the Office in choir or in common.

Clerical religious institutes where members are bound to recite the divine Office in choir are held to the use of the Latin.[125] However, this principle admits of two exceptions; i) Monasteries in missionary countries, the majority of whose members are indigenous, may obtain, from the Congregation of Religious, permission to use the vernacular in accordance with Article 40 of the Constitution.[126] The

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[121] Inter Oecumenici, n. 85.

[122] Art. 101, § 1.

[123] Cf. O'Connell, "The Choral Office in English", The Priest, XXIII, (1966), 839.

[124] S.R.C. Instructio de lingua celebrandis Officio Divino et Missa "Conventualis" aut "communitatis" apud religiosos adhibenda, 23 nov. 1965 — AAS, LVII (1965), 1010-1013. This instruction requires little comment. The translation is contained in Jurist, XXVI (1966), pp. 258 - 262. Articles concerning it include O'Connell, "art. cit.", Bugnini, "Commentarium in Instructionem", Ephem. Lit. LXXX (1966), 160-164.

[125] Instructio de Lingua, n. 1.

[126] Ibid. nn. 2 - 3.

reference to Article 40, which allows the adaption of the traditions and culture of a country in divine worship, implies that a very radical adaptation of the Office could be sought from the Congregation.[127] ii) Clerical Religious who do pastoral work in a parish, or in a sanctuary or church which is much frequented by the people (ecclesiae valde frequentatae) may recite in the vernacular those parts of the divine Office which for pastoral reasons they celebrate with the people. (partes . . . quas cum populo celebrant).[128] The two conditions; a) that a large number of the faithful must be usually present, and b) that the faithful actually participate in the celebration, must be realized at the same time. It is not sufficient that the faithful be merely present; they must be actually participating in the recitation of the Office.[129]

Nuns may obtain from the Congregation of Religious the faculty to celebrate the Office in choir in the vernacular.[130] However, it is very strongly recommended that in monasteries where the divine Office was always celebrated solemnly with Gregorian Chant the Latin language should be retained in so far as it is possible.[131] This is more than mere advice, and though at the same time it is not a strict command, it indicates the intention of the legislator. In mission territories, when the majority of the nuns are indigenous, permission is granted for the use of the vernacular.[132] Even if the Latin language is retained in the choral celebration, the Lessons can always be read in the vernacular.[133] These latter two concessions are absolute; they do not require the intervention of any higher authority for their execution.

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[127] Bugnini, "Commentarium in Instr. de Lingua", Ephem. Lit., LXXX (1966), 161.

[128] Instructio de Lingua, n. 7.

[129] Bugnini, "art. cit.", p. 162.

[130] Instructio de Lingua, n. 9.

[131] Ibid., n. 9.

[132] Ibid., n. 10.

[133] Ibid., n. 11.

Article VII. The Competent Authority for Permitting the Use of the Vernacular

1. Individual Recitation

For individual recitation the following can grant permission to their subjects to use the vernacular translation of the divine Office to fulfill their obligation: the ordinary of the place, the religious ordinary, the major superiors of non-exempt clerical religious institutes.[134] The vicar general does not enjoy this power, as he seems to be implicitly excluded by the Constitution in its use of the term, "Ordinary". In the Constitution, "Ordinary" is used in reference to the residential bishop and all those who are equated with the bishop in their own territory; these are Abbots and Prelates Nullius, Apostolic Administrators, Vicars and Prefects Apostolic, and permanently appointed Apostolic Administrators of dioceses.[135] This is in keeping with the role of the bishop in regulating the liturgy in his diocese,[136] and with the provisions of the Instruction on the Implementation of the Constitution.[137]

Religious ordinaries are major superiors,[138] who are abbots primate, abbots superior of monastic congregations, abbots of monasteries "sui iuris", supreme moderators of religious institutes, provincial superiors, their vicars and others

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[134] Constitutio de Sacra Liturgia, Art. 101, § 1; Instr. Inter Oecumenici, n. 86.

[135] Can. 198, § 1. Cf. Gordon, "art. cit.", "Periodica", LIV (1965), 539.

[136] Constitutio de Sacra Liturgia, Art. 22; Art. 79, when speaking of reserved blessings, says they are reserved to "bishops or ordinaries", equating the two.

[137] N. 78, c), when dealing with mission lands and the power to grant the faculty to omit Prime, leaves the grant of this faculty to the "ordinarius loci", and specifically rules out the vicar general. Cf. also Instr. Inter Oecumenici, n. 22.

[138] Can. 198, § 1.

having powers equivalent to that of a provincial.[139] This faculty of ordinaries and major superiors can only be used in individual cases, and the sole reason for allowing the use of the vernacular is that Latin proves a grave obstacle to the cleric or religious for the proper recitation of the divine Office.[140]

2. Choral Recitation

The Congregation of Religious grants permission for the use of the vernacular for monasteries in missionary territories.[141] For the use of the vernacular because of pastoral reasons in a church with a large group of the faithful in attendance and who participate in the Office, the competent authority to judge if these conditions are present and if the faculty is to be granted is the ordinary of the place. In addition, the major superior must give his assent and the grant must be approved by the Congregation of Religious.[142]

The competent authority for monasteries of nuns is the Congregation of Religious. The petition must be made by the monastery chapter, with the consent of the ordinary of the place, or the major religious superior if the nuns are under this jurisdiction.[143]

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[139]Can. 488, n. 8. The faculties of supreme moderators of clerical religious institutes iuris pontificii and of abbots president of monastic congregations, dated Nov. 4, 1964, included: "19. With the consent of their council, to concede to their subjects that in the recitation of the divine Office they may use a vernacular translation approved by the competent territorial ecclesiastical authority in place of the Latin text; this is to be granted in individual cases, namely, when the use of the Latin language is a grave impediment to the proper ease of understanding of the divine Office by the religious." The faculty of the Constitution, Art (101, § 1) for religious ordinaries, and of the Instruction of Sept. 26, 1964, for major superiors (n. 86) does not require the consent of the council. So this faculty 19 was not needed and is not nearly as broad as the original grant. -- cf. McManus, "Decrees and Decisions", The Jurist, XXV (1965), pp. 118-119, and note 3.

[140]Constitutio, Art. 101. § 1; Inter Oecumenici, n. 86.

[141]Instructio de Lingua, n. 3.

[142]Ibid. n. 8. a).

[143]Ibid. n. 12.

Article VIII. Authorized Translations of the Breviary

When permission is granted to use the vernacular, a "vernacular version which is approved or drawn up according to the provisions of Art. 36 of the Constitution" must be used.[144]

> Art. 36, ¶ 3. These norms being observed, it is for the competent territorial ecclesiastical authority mentioned in Art. 22 ¶ 2, to decide whether, and to what extent, the vernacular language is to be used; their decrees are to be approved, that is, confirmed, by the Apostolic See. And, whenever it seems to be called for, this authority is to consult with bishops of neighboring regions which have the same language.
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> ¶ 4. Translations from the Latin text into the mother tongue intended for use in the liturgy must be approved by the competent ecclesiastical authority mentioned above.[145]

The territorial conference of bishops is the competent authority to decide whether and to what extent the vernacular is to be used in the Liturgy, and also in the preparation of the translations. If the territorial episcopal conferences do not exist or are not yet convened, with regard to liturgical matters, the national body of bishops is the competent authority.[146] The episcopal conference must be convened according to the norms of the Council in its Decree on the Pastoral Office of Bishops.[147] Decisions of such a body which have juridic binding

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[144] Constitutio de Sacra Liturgia, Art. 101 ¶ 1; also ¶ 2 and ¶ 3.

[145] Constitutio de Sacra Liturgia, Art. 36, ¶ 3. "Huiusmodi normis servatis, est competentis auctoritatis ecclesiasticae territorialis, de qua in art. 22, ¶ 2, etiam, si casus ferat, consilio habito cum Episcopis finitimarum regionum eiusdem linguae, de usu et modo linguae vernaculae statuere, actis ab Apostolica Sede probatis seu confirmatis". ¶4. "Conversio textus latini in linguam vernaculam in Liturgia abhibenda, a competenti auctoritate ecclesiastica territoriali, de qua supra, approbari debet".

[146] Litt. ap., Sacram Liturgiam, n. X.

[147] Decr, Christus Dominus, 28 oct. 1965, nn. 37-38, --AAS, LVIII (1966), 693. The setting up of these bodies in the interim is described in Instr. Inter Oecumenici, nn. 23-31. Cf. Paulus VI, litt. ap., Ecclesiae Suae, 6 aug. 1966, n. 41, --AAS, LVIII (1966), 773-774.

force, given to it in cases mentioned in the common law, must be reviewed by the Apostolic See.[148]

There was a difficulty in interpreting Article 36, ¶ 3, of the Constitution on the Sacred Liturgy, especially the words, "the decrees are to be approved, this is confirmed, by the Apostolic See"(actis ab Apostolica Sede probatis seu confirmatis). What is the exact implication of "approved, that is, confirmed, by the Apostolic See"? Does it mean that the decisions of the territorial conference of bishops depended on the approval of the Apostolic See for their juridic authority? Or does this approval, that is, confirmation, simply mean a review or examination similar to that given to acts of a plenary or provincial council?[149] The question was further complicated by the Motu Proprio, Sacram Liturgiam, especially since the later and official version of the letter differed from the original version published in L'Osservatore Romano.[150] The Instruction, Inter Oecumenici, repeated the words of the Constitution, namely, that the acts of the episcopal conference must be submitted to the Apostolic See for "approval, that is, confirmation".[151]

The question is settled definitively by the Decree, Christus Dominus, of Vatican II, which stated that the territorial episcopal conference has juridic authority provided its acts are submitted to the Apostolic See "for review".[152] The conference has true legislative authority on this matter of the use of the

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[148]Decretum de Pastorali Episcoporum Munere in Ecclesia, Christus Dominus, n. 38, pars 4, 28 oct. 1965, --AAS, LVIII (1966), 693.

[149]Cf. Can. 291; McManus, "Commentary on the Constitution", Worship, XXXVIII (1963 - 1964), 355.

[150]Sacram Liturgiam, n. IX; Cf. The Jurist, XXIV (1964), 242-243; Worship, XXXVIII (1963 - 1964), p. 303.

[151]Inter Oecumenici, n. 29.

[152]Christus Dominus, n. 38. n. 4.

vernacular (given to it by the common law), and also on the approval of translations.[153]

In article 36 of the Constitution on the Sacred Liturgy, it is not mentioned that the translation approved by the episcopal conference must be submitted to the Holy See for review. The Motu Proprio, Sacram Liturgiam, implied that such translations should be submitted to the Holy See, but the text did not specifically say so.[154] The Instruction was most explicit on this matter: all the acts of the conference must be submitted to the Apostolic See, and it specifically stated that, when a question of the vernacular was involved, the "acta" submitted must contain two copies of the translation of the Latin text in the vernacular.

> "When it is a question of acts in which there are decrees concerning the use and extent of the vernacular language to be admitted in the liturgy, besides what is enumerated in n. 29, in accordance with Article 36, ¶ 3, of the Constitution and the Apostolic Letter, "Sacram Liturgiam", n. IX, the acts should also contain:
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> a) an indication of the individual parts of the liturgy which are to be said in the vernacular;
> b) two copies of the liturgical text prepared in the vernacular, one copy of which will be returned to the body of bishops;

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[153] Cf. McManus, "art. cit.", Worship, XXXVIII (1963-1964), 355-356; Gordon "art. cit.", Periodica, LIV (1965), 547.

[154] Sacram Liturgiam, IX. Since according to Article 101 of the Constitution those who are obliged to recite the divine Office may, in various ways, be permitted to use the vernacular instead of the Latin language, we deem it opportune to specify that the various versions are to be made and approved by the competent territorial ecclesiastical authority (a competente auctoritate ecclesiastica territoriali conficiendas et approbandas esse) in accord with art. 36, ¶ 3 and ¶ 4; but the acts (acta) of this authority in accord with the same art. 36, ¶ 3, are to be duly approved, that is, confirmed (probanda seu confirmanda) by the Apostolic See. --AAS, LVI (1964), 143. The version in L'Osservatore Romano had specifically stated that the translations must be submitted to the Apostolic See for approval (recognoscendas atque probandas ab Apostolica Sede). The official version simply said the "acta" must be submitted for review. The problem was, what was meant by "acta"?

c) a brief report concerning the criteria upon which the work of translation was based."[155]

This, at first sight, seems to limit the power of the conference of bishops which was granted in the Constitution, by requiring the submission of the vernacular text to Rome for review. But the vernacular text is simply submitted to the Holy See for review, and not also to obtain its authority; the text obtains its authority from the episcopal conference.[156]

The "approval or confirmation" of the Holy See is simply a review or inspection of the acts of the conference by the Apostolic See and thus provides for their possible correction if this is necessary, that is, if they should in any way exceed the authority of the body of bishops. "Confirmation means that the law enacted by the inferior legislator (namely, the territorial body of bishops) is subsequently acknowledged and completed by the higher authority (namely, the Apostolic See). The subsequent confirmation given by the higher authority confers an additional juridic or moral force, but it does not change the character of the enactment. The legislative authority remains that of the territorial body of bishops".[157]

The vernacular translations may not be used until they have been reviewed and accepted by the Apostolic See.

> The decree of the territorial authority which need the approval, that is, the confirmation of the Apostolic See, shall be promulgated and put into practice only when

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[155] Inter Oecumenici, n. 30.

[156] Gordon, "art. cit.", p. 562.

[157] McManus, "art. cit.", pp. 355-356; "Approval and confirmation of the Holy See is a simple examination and supervision". -- Gordon, "art. cit.", p. 560. Cf. Braga, "Commentarium in Const. de S. Lit.," Ephem. Lit., LXXVIII (1964), 360.

> they have been approved, that is, confirmed by the Apostolic See.[158]

Translations of Breviaries in rites other than the Roman rite can be prepared and approved by the ordinaries of that language.[159] Thus, in the translations of a particular rite such as the Cistercian or Dominican, the proper ordinary for the vernacular translation would be the provincial superior. In parts that are common to both rites (the Roman and particular rites) the translation approved by the territorial conference of bishops is to be used. The complete vernacular version, the part common to both rites, and the proper parts translated under the direction of the ordinary, should be sent to the Apostolic See for review, since the vernacular versions of the higher body (the episcopal conference) must be submitted for such review. This same principle can be applied to vernacular translations of propers of dioceses or of religious communities, namely, the ordinary should approve the translation and submit it to the review of the Apostolic See.[160]

Decree of the U. S. Bishops on the use of the Vernacular in the Office.

> 3. According to the norm of Art. 101, § 2-3, it is lawful to use the English language in the entire divine Office, but only by the laity, by non-clerical members of institutes dedicated to acquiring perfection who are subject to us, and by clerics who celebrate the Office with a group of the faithful or with members of institutes dedicated to acquiring perfection who lawfully use the English language.

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[158] Inter Oecumenici, n. 31. Gordon states that this clearly means that the texts must be submitted to Rome before use, in view of n. 30 § b), quoted above of Inter Oecumenici, -- "art. cit.", p. 652. McManus stated that the translation need not be submitted and could in fact be used before it was submitted to the Apostolic See, -- "art. cit.", p. 359. However, McManus was writing before the promulgation of Inter Oecumenici, and in view of the later Instruction his opinion appears now to be untenable, though he states this same opinion in another article, "The Juridical Power of Bishops", --Concilium, Vol 2, p. 41. This later article does not mention the Instruction, so he apparently did not advert to it at the time of writing. Cf. Braga, "Commentarium in Instr., Inter Oecumenici", p. 345.

[159] Inter Oecumenici, n. 88.

[160] Braga, "Comm. in Instr., 'Inter Oecumenici'", p. 497.

5. In all these cases, and also in the divine Office recited in the English language by clerics in virtue of a faculty granted by the ordinary according to the norm of Art. 101, § 1, it is lawful to use only those translations of the liturgical text into the English language which have been approved by us, in accordance with Art. 36, §4.

6. Where the true and certain necessity of the Church, in the judgment of the local ordinary, requires it, with the permission of the same local ordinary it is lawful to use a vernacular language known to the people in liturgical services celebrated by people of a language other than English, provided, however, that the translation is approved by a competent ecclesiastical territorial authority of the same language and only in the cases enumerated above. This is also valid for the divine Office recited by clerics in virtue of a faculty granted by the ordinary according to the norm of Art. 101, § 1.[161]

Article IX. The Publication of the Breviary

An edition of a liturgical book can be the "editio typica" or the "editio iuxta typicam". The "editio typica" is that edition of a sacred book which has been submitted page by page for the approval of the competent ecclesiastical authority, and which is thus authentic in every way. Attached to this edition is a decree stating that this edition is approved as the "editio typica" and that all other editions must be in conformity with it.[162] The "editio iuxta typicam" is an edition which the ordinary approves as conforming perfectly to the "editio typica".[163]

Inasmuch as the vernacular was allowed by the Constitution on the Sacred Liturgy, a new set of rules for the publication of Liturgical Books was contained

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[161] Decree of the Bishops of the United States issued on April 2, 1964, in Washington D. C., The Jurist, XXIV (1964), 358 - 360.

[162] H. Schmidt, "Editiones Typicae Librorum Liturgicorum", Periodica, XLIII (1954), 172; McManus, The Congregation of Rites, p. 81; Gordon, "art. cit.", p. 576.

[163] Loc. cit.; cf. Can. 1390.

in a Decree of January 27, 1966, in which the distinction was made between editions containing the Latin text alone, and those containing vernacular translations.[164] The rules of this decree apply to the publication of the Roman Breviary.[165]

1. The Roman Breviary Containing the Latin Text Alone

The "editio typica" of the Roman Breviary which contains the Latin text alone is that which is published by the Sacred Congregation of Rites, by the Vatican Polyglot Press.[166] Only publishers who have a pontifical charter may publish the "editio iuxta typicam".[167] They must obtain the permission to publish from the Congregation of Rites and make a contract concerning the conditions of publication with the Administratio Bonorum of the Holy See.[168]

2. The Roman Breviary in a Vernacular Translation

The "editio typica" of the Roman Breviary which contains a vernacular translation, with or without the Latin text, is that which is published in any country under the authority of the episcopal conference. The decree certifying it as the "editio typica" is given by the President of the episcopal conference or with his mandate, by the President of the National Liturgical Commission. This decree should mention that the Holy See gave confirmation to the vernacular text.[169] The national episcopal conference can give any publisher the right to publish an "editio iuxta typicam",[170] but the publisher must have the permission of the President of the

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[164] S.R.C., Decretum de editionibus librorum liturgicorum, Cum, nostra aetate, 27 ian. 1966, AAS, LVIII (1966), 169 - 170. The decree was prepared by the Congregation of Rites and the consilium for the implementation of the Constitution on the Sacred Liturgy. This decree replaced a decree of 1946: S.R.C., decr. 10 aug. 1946 -- AAS, XXXVIII (1946), 371 - 372.

[165] Decr. Cum, nostra aetate, n. 10.

[166] Ibid., n. 2, a).

[167] Ibid., n. 2, a).

[168] Ibid., n. 8, a).

[169] Ibid., n. 1.

[170] Ibid., n. 2, b).

Episcopal Conference (or, with his mandate, of the President of the Liturgical Commission), and contracts must be made with the Administratio Bonorum of the Holy See for the Latin text, and with the Conference of Bishops concerning the vernacular text.[171] The rule of the Code continues regarding the approbation of the "editio iuxta typicam": the ordinary of the place of publication must certify that the edition is in complete harmony with the "editio typica".[172]

A special condition is laid down regarding vernacular editions of the Roman Breviary and Missal. They should contain, in addition to the vernacular translation, the Latin text.[173] This seems to be an exhortation rather than an absolute prescription. This is borne out by the fact that episcopal conferences have approved editions of the Breviary which contain the vernacular translation alone, and these editions have been reviewed and confirmed by the Holy See.

3. Decree of U. S. Bishops

The Bishops of the United States have approved two vernacular editions of the Roman Breviary for liturgical use in the dioceses of the United States: The Hours of the Divine Office in English and in Latin, (3 vols; Collegeville, Minn: Liturgical Press, 1963-1964); Roman Breviary in English (New York: Benziger, 1964).[174] These translations were confirmed by the Consilium for the implementation of the Constitution on the Sacred Liturgy on May 1, 1964.[175]

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[171] Ibid., n. 8, b).

[172] Ibid., n. 9; cf. Can. 1390.

[173] "Editiones Missalis et Breviarii, quae usui liturgico inserviunt, et interpretationem popularem exhibent, ad normam nn. 57 et 89 Instructionis huius S.R.C. diei 26 sept. 1964, textum quoque latinum contineant oportet." -- Decr. Cum, nostra aetate., n. 5.

[174] Decree of the United States Bishops given in Washington D.C., April 2, 1964. -- Jurist, XXIV (1964), 362 - 363.

[175] Consilium ad Exsequendam Constitutionem de Sacra Liturgia, Prot. n. 622-64, Civitatum Foederatarum Americae Septentrionalis, 1, maii 1964. -- Jurist, XXIV (1964), 363 - 367, Roman Breviary in English contains the vernacular text alone.

CHAPTER VI

DISPENSATION AND COMMUTATION

Prior to Vatican II a dispensation from the obligation of reciting the divine Office was reserved exclusively to the Holy Father.[1] The ordinary did not possess the power of granting a dispensation, since it was not given to him by the general law of the Church. In fact, the ordinary could dispense only in virtue of canon 81, in an urgent case when recourse to the Holy See was impossible.[2] This was quite in line with the pre-Code teaching of the canonists; Schmalzgrueber, for example, held that the bishop could dispense only in a doubtful case.[3]

If a centenary custom whereby the bishop could dispense from the canonical Hours existed prior to the Code, it seems that such a custom continued to exist in accordance with the principles now governing pre-Code customs.[4] The commentators regard this obligation as almost one that almost never dispensed and said that the Holy Father was very slow to grant such a dispensation. Vatican II

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[1] Wernz-Vidal, De Personis, n. 117; Sipos, Enchiridion Juris Canonici, 107; Teso, De Religiosis, p. 188.

[2] Cf. Naz, Traité de Droit Canonique. I, n. 419.

[3] Schmalzgrueber, Lib. III, tit. 41, n. 95.

[4] Can. 6. Vermeersch-Creusen, Epitome, I, n. 161; Cappiello claims that such a custom cannot be sustained after the Code since the Holy See does not customarily grant this dispensation, an inferior (the bishop) cannot grant it in virtue of a custom.--"De Ordinariorum dispensandi facultate ad normam Can. 81" (Catholic University of America Canon Law Studies, n. 323; Washington, D.C., The Catholic University of America Press (1952), p. 112. Cf. Reilly, The General Norms of Dispensation, (Catholic University of America Canon Law Studies, n. 119: Washington D.C.; The Catholic University of America Press 1939), p. 85.; Naz, op. cit., I, n. 419.

developed a new mentality toward the obligation of the divine Office,[5] and specifically mentioned the question of dispensing from the obligation.[6] However the Motu Proprio, De Episcoporum Muneribus, threw a completely new light on the dispensing powers of bishops.[7]

Article I. The Power of the Residential Bishop

Vatican II decreed:

> Each diocesan bishop has the faculty of dispensing the faithful over whom they exercise authority according to the norm of the law from a general law of the Church in a particular case as often as they judge that it contributes to their spiritual good, unless a special reservation has been made by the supreme authority.[8]

This power of dispensing is explained and the instances reserved to the Holy See are enumerated, in the Motu Proprio, De Episcoporum Muneribus. A dispensation is a relaxation of the law in a particular case. The faculty is exercised only in regard to laws which prescribe or forbid something, not to constitutive laws.[9] The obligation of the divine Office is a prescriptive law and therefore falls under the dispensing power of the bishop as given in "Christus Dominus" and explained and implemented in "De Episcoporum Muneribus".

This same dispensing power is enjoyed by all those who are equated in the

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[5] Constitutio de Sacra Liturgia, Art. 83 - 101.

[6] Ibid., Art. 97.

[7] Paulus PP. VI, litt. ap., De Episcoporum Muneribus, 15 iunii, 1966 --AAS, LVIII (1966), 467 - 472. Hereafter always referred to as De Episcoporum Muneribus.

[8] Christus Dominus, 8,b Singulis Episcopis dioecesanis facultas fit a lege generali Ecclesiae in casu particulari dispensandi fideles in quos ad normam iuris exercent auctoritatem, quoties id ad eorum bonum spirituale conferre iudicent, nisi a Suprema Ecclesiae Auctoritate specialis reservatio facta fuerit. --AAS, LVIII (1966), 676.

[9] De Episcoporum Muneribus, n. IV: "Ad normam can 80. dispensatio intelligitur relaxatio legis in casu speciali. Facultas autem dispensandi exercetur circa leges praecipientes vel prohibentes, non autem circa leges constitutivas".

law with residential bishops: Vicars and Prefects Apostolic, permanently constituted Apostolic Administrators, Abbots and Prelates nullius.[10] This power is not conceded to ordinaries as such,[11] but to bishops. At every mention of bishops in this chapter it is understood that the reference covers residential bishops and their equivalents in the law.

The bishop can dispense any of his subjects from the obligation of the divine Office. Therefore he can dispense all clerics who are incardinated in his diocese[12] and all who have a domicile or quasi - domicile in his diocese.[13] Since this is an exercise of voluntary power of jurisdiction he can dispense his subjects even when they are outside his territory, and he can also dispense himself wherever he may be.[14] He can also dispense all who are actually present in his territory, whether peregrini,[15] or vagi.[16] Anyone who has been dispensed can continue to use the dispensation within the limits of the grant, even when he leaves the territory of the bishop granting the favor.[17]

It is true, then, that the bishop can dispense religious who are not members of exempt institutes, and who are bound to the Office by reason of major Orders.

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[10] De Episcoporum Muneribus, Art. III.

[11] Can. 198, § 1.

[12] Cans. 111 ff.

[13] Can. 94.

[14] Can. 201, § 3 Nisi aliud ex rerum natura aut ex iure constet, potestatem iurisdictionis voluntariam seu non-iudicialem quis exercere potest etiam in proprium commodum, aut extra territorium exsistens, aut in subditum e territorio absentem. Cf. Belluco, Novissimae Ordinariorum Locorum Facultates, Commentarium in Motu Proprio 'Pastorale Munus' (Romae: Pontificium Athenaeum Antonianum, 1964) p. 146.

[15] Can. 91; cf. Michiels, Normae Generales, II, 734; Cappello, Summa, I, n. 124; Reilly, op. cit., p. 100.

[16] Can. 91.

[17] Michiels, op. cit., II, 734.

Religious who are bound by reason of solemn profession cannot normally be dispensed by the bishop from the obligation of individual recitation, since the bishop is restricted from dispensing religious from general laws "which affect Religious as such".[18] The obligation which arises from solemn profession is an obligation affecting the religious qua religious. However, if a dispensation is given by a bishop to his subjects because of the burden of pastoral work, e.g. in view of heavy confessions at Eastertime, then any religious who is involved in pastoral work can make use of such a dispensation, because in the matter of exercising the pastoral office even exempt religious come under the jurisdiction of the local ordinary.[19]

This dispensation can be given either to an individual or to a group, since the bishop's power extends to a particular case (in casu particulari), and "a particular case looks not only to the faithful as individuals, but also to several physical persons forming a community in the strict sense".[20] He could give a general dispensation to all the members of his diocese, since it forms a community in the strict sense. This power of the bishop is much wider than that granted by the Constitution on the Sacred Liturgy, which restricted the exercise of the power to individual cases (in casibus singularibus).[21]

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[18] De Episcoporum Muneribus, IX. We the (Holy See) expressly reserve to ourselves: 4. Dispensation from those general laws which affect religious as such, not, however, insofar as religious are subject to local Ordinaries according to the norm of the common law and especially of the conciliar decree Christus Dominus (nn. 33-35), religious discipline always remaining firm and without prejudice to the right of their own superior. Dispensations from the rest of the general laws only if in cases which touch the members of exempt clerical religious orders.

[19] Cf. Christus Dominus, n. 35, 4).

[20] De Episcoporum Muneribus, VI.

[21] Constitutio de Sacra Liturgia, n. 97. In casibus singularibus iustaque de causa, Ordinarii possunt subditos suos ab obligatione Officium recitandi ex toto vel ex parte dispensare vel id commutare.

For a dispensation there must be a just and reasonable cause proportionate to the gravity of the law from which a dispensation is given. The spiritual good of the faithful is always a legitimate cause for any dispensation.[22] The presence of a just and reasonable cause is necessary for the validity of the dispensation, since the dispensation is granted by an intermediate authority i.e., by someone inferior in power to the lawmaker.[23] The cause must be proportionate to the gravity of the law. In this case the cause need not necessarily be grave, even if the obligation itself is regarded as grave; any just and reasonable cause will be sufficient.[24] It is the bishop himself who must judge whether a just and reasonable cause exists.[25] Obviously a greater cause is required to dispense from the whole Office than from part of it. In view of the special place of Lauds and Vespers in the daily order of the Office, a greater cause would be required before a dispensation from these parts could be granted than from other parts of the Office. Some of the causes which could be regarded as just and appropriate are: weak sight, ill health, nervous condition, pastoral requirements, a long journey.

If the bishop is doubtful whether a cause is sufficient, he can always

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[22] De Episcoperum Muneribus, VIII. According to the norm of Canon 84, ¶ 1, to grant a dispensation, a just and reasonable cause is required together with a full consideration of the importance of the law from which a dispensation is being granted. A legitimate cause for a dispensation, however, is the spiritual good of the faithful.

[23] Can. 84, ¶ 1. A lege ecclesiastica ne dispensetur sine iusta et rationabili causa, habita ratione gravitatis legis a qua dispensatur; alias dispensatio ab inferiore data illicita et invalida est. Cf. Cicognani, Canon Law, authorized English version by Joseph M. O'Hara and Francis Brennan, (Philadelphia, 1934), p. 856.

[24] Belluco, op. cit., p. 146; Salmon, "La Reforme du Bréviaire selon la Constitution 'De Sacra Liturgia', du IIe Concile du Vatican", L'Ami du Clergé, LXXIII (1963), 758.

[25] Gy, "L'Office Divin" -- La Maison Dieu, 77 (1964), 173.

validly dispense his subject.[26] If a cause which is alleged in the petition is not actually present, the dispensation is invalid, and the recipient is still obliged to recite the Office.[27] The dispensation is effective as long as the cause for which it was granted is present; when the motive cause ceases, the dispensation ceases.[28]

Since the bishop has power of dispensing from the Office he can also commute the Office, for a commutation involves a lesser exercise of power. Commutation means changing the obligation of reciting the divine Office into the duty of saying other prayers,[29] or changing one obligation into another.[30] Commutation involves two elements, a dispensation from the obligation of the Office and the replacing of it with an obligation to so some other work instead. The Motu Proprio, Pastorale Munus, indicated that the ordinary could commute the Office to at least a third part of the Rosary for those with weak eyesight or for any cause.[31] Because of the dispensing power which he now enjoys, the bishop is free to commute the Office to any appropriate prayer that he may choose. A much lesser cause is required for commuting the Office than for a complete dispensation.[32] Because of the importance of the divine Office as the Church's public prayer, it seems appropriate that in the matter of commutation the ordinary should commute the entire Office to one or several of the Hours rather than substitute other prayers.[33]

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[26] Can. 15.

[27] Reilly, op. cit., p. 109.

[28] Can. 86. Cf. Cicognani, op. cit., p. 861.

[29] Belluco, op. cit., 143.

[30] Gy, "art. cit"., La Maison Dieu, LXXVII (1964), 173.

[31] Paulus PP. VI, litt. ap., Pastorale Munus, 30 nov. 1963, n. 26 --AAS, LVI (1964), 9 - 10.

[32] Belluco, op. cit., p. 146.

[33] Murphy, "The Divine Office", Australasian Catholic Record, LXI (1964), 244.

Since the choral obligation of religious is an obligation arising primarily from the constitutions of the institute, a bishop has no power to dispense from choir. He does have the power, however, to dispense canons from the choral obligation since they are his subjects directly, and in fact, the Motu Proprio, Pastorale Munus, made specific mention of such a faculty.[34]

Since this dispensing power of the bishop or his equivalent in law involves an ordinary power, he can delegate it according to the law governing delegation.[35] He is free to delegate anyone he wishes. Since this involves the ordinary power of the bishop, the vicar general enjoys the same power of dispensing, unless the bishop has reserved this power to himself.[35a]

Article II. The Power of Religious Superiors

Religious ordinaries do not enjoy the same broad dispensing powers as residential bishops; however, they were included in the grant of power for dispensing or commuting the obligation of the breviary in the Constitution on the Sacred Liturgy.

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[34] Pastorale Munus. 24. Reducing, for a just cause, the obligation by which cathedral and collegiate chapters are obliged to perform the daily divine Office in choir, by granting that the choral service may be satisfied on certain days only or by a certain determined part of the Office only. 25. Entrusting, where necessary, certain canons with the tasks of the sacred ministry, of teaching or of the apostolate, with a dispensation from choir, while preserving the right of receiving the fruits of the prebend, but not the distributions, whether inter-praesentes, as they are called, or daily.

[35] Can. 199.

[35a] Can. 368 § 1. Cf. Buijs, "De Potestate Episcoporum Dispensandi," Periodica, LVI (1967), 96. Buijs also states that the following enjoy this power to dispense in virtue of the law in the same way as the Vicar General: Episcopal vicars, vicars delegates, vicars capitulars, pro-vicars, pro-prefects, and even auxiliary and coadjutor bishops. -- Ibid., 97-98.

> 97. In individual cases (in casibus singularibus), and for a just reason, ordinaries can dispense their subjects wholly or in part from the obligation of the divine Office, or may commute the obligation.[36]

This faculty was also conceded to major superiors of non-exempt clerical religious institutes, and of societies of clerics who live the common life without vows.[37]

The religious ordinary has the power to dispense his subjects from this obligation wherever they may be residing. His subjects are the professed religious, the novices and the postulants of the institute.[38] The phrase "In casibus singularibus" sets very definite limits on the exercise of this dispensing power. The ordinary can, in virtue of this faculty of Art. 97 of the Constitution, dispense individuals only.[39] The dispensation can be given only per modum actus. The ordinary cannot give a general dispensation to the whole community.[40] But he can give if for a number of individuals, provided the cause is sufficient for each.[41]

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[36] Constitutio de Sacra Liturgia, Art. 97; Sacram Liturgiam, VII.

[37] Inter Oecumenici, n. 79.

[38] Cappello, Summa, I, n. 124.

[39] Belluco, op. cit., p. 145.

[40] Possuntne Ordinarii religiosi vi art. 97 Constitutionis de Sacra Liturgia et art. VII Motu Proprio "Sacram Liturgiam" in casibus singularibus et iusta de causa a recitatione Divini Officii dispensare etiam singulas communitates ex toto vel ex parte, aut commutare? Resp: Negative. Art. 97 Constitutionis est obvius: "in casibus singularibus", Nullo modo agitur de dispensandis communitatibus chore adstrictis. Ideo Motu Proprio "Pastorale Munus" n. 24 concessit Episcopis facultatem reducendi obligationem choralem Capitulorum. Clare tandem excluditur talis interpretatio in Instructione diei 26 sept. 1964, n. 78, c. ubi pro regionibus Missionum peculiares conceduntur facultates, sed, "salva disciplina chorali religiosa . . . iure statuta."--Notitiae I, p. 186, Dubia n. 43.

[41] Salmon, "art. cit.", L'Ami du Clergé, LXXIII (1963), 758

This dispensing power concerns itself only with the individual recitation, and gives the religious ordinary no faculties whatsoever regarding the obligation of the choral recitation.[42] The validity of the dispensation depends on the presence of a just and reasonable cause, and it is the ordinary who judges the reasonableness of the cause. The dispensation can be given for all the Office or simply for a part of it.

If the ordinary judges the cause to be insufficient for a dispensation, he is still free to commute the obligation, provided the cause warrants this. He can substitute any other prayers in such a commutation in individual cases.[43]

This power of dispensing and commuting involves an ordinary power of the ordinary or of the major superior, who can delegate it according to the rules of delegation.

The common law gives no one permission to dispense from the choral obligation, nor does the Constitution on the Sacred Liturgy.[44] In fact the obvious intent of the Council was to leave the choral obligation and the choral Office unchanged. The ordinary can dispense his subjects from the obligation of the divine Office as individuals, and hence he can dispense individuals from choir for a just cause, but he cannot dispense a religious house from the obligation of choir, and it must be borne in mind that the choir obligation is directly incumbent on the religious house, and only indirectly on the members of the house.

The choir obligation arises from the Constitutions of the Order, and the Code of Canon Law simply accepts and confirms that obligation.[45] The common law

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[42] Cf. Reply quoted in footnote 40 *supra*.

[43] *Constitutio de Sacra Liturgia*, Art. 97.

[44] Cf. the reply of Consilium for implementing the Constitution, *supra*, footnote 40.

[45] Can. 610, § 1; cf. Schaefer, *De Religiosis*, n. 1200; Fanfani, *De Religiosis* n. 396.

gives the superior no power concerning the choral obligation, other than the power of dispensing individuals from choir because of study.[46]

Accordingly, inasmuch as the obligation as stated in Canon 610, ¶ 1, arises from the constitutions, the power of the superior to dispense a community from the choir service must look for the specification to the constitutions of the religious institute. If the constitutions grant him the power, he can dispense from the obligation mentioned in Can. 610, ¶ 1; if the constitutions do not grant any dispensing power, he cannot dispense from the obligation as it is there stated.[47]

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[46]Can. 589, ¶ 2. Studiorum tempore magistris et alumnis officia ne imponantur quae a studio eos avocent vel scholam quoque modo impediant; supremus autem Moderator et in casibus particularibus alii quoque Superiores possunt pro sua prudentia eos a nonullis communitatis actibus, etiam a choro, praesertim nocturnis horis, eximere, quoties id studiis excolendis necessarium videatur.

[47]Michiels, op. cit., II, p. 722; Grajewski, The Supreme Moderator of Clerical Exempt Religious Institutes (The Catholic University of America Canon Law Studies, n. 369: Washington, D.C., The Catholic University of America Press, 1957), pp. 109 - 112.

CHAPTER VII

THE DIVINE OFFICE TODAY

Article I. The Gravity of the Obligation

The question of the guilt involved in omitting the recitation of the divine Office is a matter to be dealt with by the moral theologian. However, the judgment regarding the gravity of the obligation, since it is an integral part of the interpretation of the law by which the obligation is imposed, is a matter for canonical commentary as well.

There is a grave obligation to observe a law if the intention and purpose or special circumstances of the law are of considerable importance for the common welfare.[1] The gravity depends on the purpose of the law; if the purpose is of great moment and the action specified is conducive to attaining this purpose, the law involves a grave obligation.[2] The mind of the legislator may be gleaned from the language he employed in formulating the law,[3] or from the severity of the sanctions he attached to the law.[4] In addition its gravity is indicated by the opinions of the doctors or commentators, and most especially by its use by those who are bound by the law, for "custom is the best interpreter of the law".[5]

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[1] Häring, The Law of Christ, translated by Edwin G. Kaiser (3 vols., Westminster, Md.: Newman Press, 1961-1966), I, 273.

[2] Van Hove, De Legibus Ecclesiasticis, p. 146.

[3] Can. 18.

[4] Noldin-Schmitt, Summa Theologiae Moralis, Vol. I, De Principiis, (27. ed., Barcenone: Herder, 1945), n. 162.

[5] Can. 29; Cf. Van Hove, De Legibus Ecclesiasticis, p. 167; Noldin, De Principiis, n. 162.

Before there can be a grave obligation by law, the matter involved must be adjudged grave matter, because only grave matter can become of obligation sub gravi.[6]

> Can. 135. Clerici, in maioribus ordinibus constituti, exceptis iis de quibus in can. 213, 214, tenentur obligatione quotidie horas canonicas integre recitandi secundum proprios et probatos liturgicos libros.

There can be no doubt that the canon imposes an obligation, but the words of the canon do not in and of themselves indicate that it is a grave obligation. Yet the commentators on this canon were unanimous in declaring that this canon imposed a grave obligation.[7] The canon must be understood in the context, both historical and legal, in which it was formulated. In the Code the obligation of the divine Office is coupled with the obligation of celibacy, which is regarded as a grave obligation. This is particularly clear since the two canons named in can. 135 specifically mention only two obligations of the recipient of major Orders, viz. celibacy and the divine Office.[8] Both obligations are undertaken at the reception of subdiaconate and some authors specifically join the two together, treating both as grave obligations.[9]

The obligation of the divine Office originally concerned only benefice-holders among the secular clergy. Right through the centuries the penalty of a loss of revenue was imposed on the benefice-holder who failed to recite the Office.[10]

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[6] Van Hove, op. cit., p. 146.

[7] Cappello, De Sacra Ordinatione, n. 618; Berutti, Institutiones, II, 116; Jone, op. cit., I, 142; Ojetti, De Personis, p. 130; Vermeersch-Creusen, op. cit., I, n. 220; Noldin-Schmitt, Vol II, De Praeceptis (26. ed., Barcenone: Herder, 1945) n. 757.

[8] Cf. cans. 213, 214.

[9] Blat, op. cit., II, p. 90; Cocchi, op. cit., Lib. II, pars, I, 1, p. 120.

[10] Cf. supra p. 18.

This penalty is repeated in the Code's legislation for benefice-holders.[11] Moralists had the same attitude toward the obligation as incumbent on all those who were in major orders as they had toward the obligation as incumbent on benefice-holders. In both cases, because of the restitution involved, there existed also an obligation binding in justice. In both cases, likewise, the obligation was regarded as a grave obligation.[12]

Noldin stated that the purpose of the obligation was the furtherance of divine worship, and that the thing commanded, viz. the recitation of the Office, was most conducive to fulfilling this purpose, and accordingly was a grave matter.[13]

The history of this particular institute shows how the obligation was affected by the spirituality of the particular period in question. "Private recitation", or as it is now called, "individual recitation", really took a firm grip and flourished for the first time in the 15th century during the period of the "devotio moderna", when the emphasis was on a wholly interior piety, the interior life and devout exercises. This led to the abandonment of the solemn celebration in common inasmuch as the private recitation seemed more suited to personal devotion, and as a result the Office became the personal prayer of the priest.[14]

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[11]Can. 1475.

[12]Häring, "A Closer Look at the Breviary Obligation", Worship, XXXVII (1962-1963), 276-277.

[13]Noldin, De Praeceptis, n. 757.

[14]Salmon, The Breviary Through the Centuries, p. 21; cf. supra R 36. To a large extent the Office is widely regarded even today as exclusively the prayer of the priest. -- McManus, The Council and the Liturgy (Washington, D.C.: N.C.W.C., no date), p. 24.

This attitude of treating the Office as primarily the priest's or religious' own personal prayer has continued to our day. It was strenthened by the personal devotion movement of the 17th century. It is this approach to the Office which was uppermost at the time of the writing of the Code, and hence authors group this obligation of the divine Office with the canons prescribing other exercises of devotion to strengthen the cleric's spiritual life, such as the daily meditation, the Rosary, visits to the Blessed Sacrament, the examination of conscience, the annual Retreat.[15] The Code itself does not group the obligation of the Office with these. Some authors devote as much space to describing the indulgence attached to the recitation of the Office as they do to explaining the institute itself.[16] Treating the obligation within the context of the exercises of piety is found also in the papal writings, even in recent times.[17]

This exhortation to treat the divine Office as a personal prayer and to make every effort to recite the Office with more devotion is a very praiseworthy attitude, and is, in fact, advice that must be heeded by the priest reciting the

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[15] Cans. 125, 126. Cf. Cappello, Summa, I, p. 202; Berutti, Institutiones, II, 113, 116; Maroto, Institutiones Iuris Canonici, I (Romae, 1921), pp. 615, 617; Prümmer, Manuale Iuris Canonici (5. ed., Friburgi-Brisgoviae, 1927), pp. 89-90.

[16] Beste, op. cit., p. 194.

[17] Ioannes XXIII, litt. encycl., Sacerdotii Nostri Primordia, 1 aug. 1959; "This constant union with God is best achieved and preserved through the various practices of priestly piety. Many of the more important of them, such as daily meditation, visits to the Blessed Sacrament, recitation of the rosary, careful examination of conscience, the Church in her wise and provident regulations has made obligatory for priests. As for the Hours of the Office, priests have undertaken a grave obligation to the Church to recite them." (Ad horarias autem preces quod attinet, sacerdotes gravi officio erga Ecclesiam suscepto eas recitare tenentur"). -- AAS, 51 (1959), 560. Cf. Pius XI, litt. encycl., Ad Catholici Sacerdotii, 20 dec. 1935 -- AAS, XXVIII (1936), 18-19.

Hours. But the Office must be regarded primarily as the Church's public prayer, and so the juridic obligation relating to the Office must relate to it as to the Church's public prayer. "When this wonderful song of praise is rightly performed by priests and others who are deputed for this purpose by the Church's ordinance or by the faithful praying together with the priest in the approved form, then it is truly the voice of the bride addressed to the bridegroom".[18] In this statement one notes the emphasis on the Office as the prayer of the community, so that its communal celebration is always to be preferred.

Only secondarily is the Office meant to be a means subservient to personal piety. It would seem that moralists treated the question of the Obligation and its gravity more within the context of personal piety and as a means of personal perfection, than within the context of the public worship of the Church. The obligation of reciting the divine Office to increase one's personal sanctity is a moral obligation, and as such could be even a grave obligation, but it is not a juridic obligation, nor is this the purpose of the law which binds the priest to recite the divine Office. However, one is bound to recite any prayer with the greatest possible devotion and fervor, and with regard to the question of the Office the one who prays in the name of the Church increases the effectiveness of the public prayer, the more devout and prayerful his recitation is.[19]

The distinction that has been drawn does not favor mere juridicism. Rather, it means to emphasize the false attitude of many canonists and theologians who,

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[18] Constitutio de Sacra Liturgia, Art. 84.

[19] Priests who are engaged in the sacred pastoral ministry will offer the praises of the Hours with greater fervor the more vividly they realize that they must heed St. Paul's exhortation: "Pray without ceasing". -- Ibid., Art. 86.

in dealing with the obligation of clerics to celebrate the divine Office, treated the divine Office as an exercise of piety, for thereby they confused the priest's obligation to pray and seek personal sanctification on the one hand, with his obligation to pray for and on behalf of the Church, on the other. In fact, however, it is this latter obligation that is involved in the juridic obligation of the divine Office, as expressed in the Code. The gravity of the obligation imposed by this law must be judged within the context of public worship.[20]

When the authors unanimously agree that there is a grave obligation involved, there appears to be no doubt at all in their minds, for they do not even mention the possibility of another opinion; as recently as 1960 Häring stated: "There is undoubtedly a grave obligation to recite the entire breviary."[21] The papal and curial documents concerning the obligation of the Office incumbent on those who are in major Orders indicated that this was regarded as a grave obligation. The canon formulated for Vatican I specifically stated that this was a grave obligation.[22] Pope St. Pius X, in his Constitution, Divino Afflatu, in introducing the new breviary stated: "Those who are bound to the recitation of the divine Office according to the Roman Rite should know that they cannot satisfy this so grave duty (tam gravi . . . officio), unless they use this Psalter as we have arranged

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[20]The divine Office is offered by priests "in the name of the Church for all the people entrusted to their care, and indeed for the whole world". -- De Presbyterorum Ministerio et Vita, n. 5. -- AAS, LVIII (1966), 998.

[21]The Law of Christ, II, 265. The translation was based on the 1960 German edition.

[22]Cf. supra p. 51.

it."[23] It must be added that all Pre-Code authors who treated of the subject considered this a grave obligation.[24]

1. The Obligation of the Individual Parts

The obligation to recite the entire Office was considered a grave obligation but authors clarified the issue even further; they stated that the obligation of each single part constituted a grave obligation in itself, e.g., the obligation to recite a minor Hour was considered a grave obligation.[25] The obligation as enunciated in the Code demands that the Office be recited in its entirety (integre), but does a minor Hour constitute sufficient matter for a grave obligation? As already pointed out, before a grave obligation can be imposed, a matter of grave importance must be involved.

The authors never explained how they judged the gravity of the minor Hours. Common sense, or to put it another way, the judgment of prudent men, would seem to indicate clearly that the matter involved in the obligation of reciting a minor Hour undoubtedly could not constitute a grave matter, and could never be judged as being of grave importance. Two authors, over fifty years apart admitted this. "In the divine Office each single hour . . . is in itself undoubtedly a light matter."[26] "It is difficult to find an intrinsic reason for this (that the minor Hour is of

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[23] Pius X, const. Divino Afflatu, 1 nov. 1911 -- AAS, III (1911), 637.

[24] Cf. Suarez and Schmalzgrueber, supra pp. 43-46.

[25] Cappello, De Sacra Ordinatione, n. 618; Ojetti, De Personis, p. 130; Vermeersch-Creusen, op. cit., I, n. 220; Noldin-Schmitt, De Praeceptis, n. 757; Abbo-Hannan, op. cit., I, 193. Häring states it thus: "Even careless neglect of so much as one canonical Hour is generally held to be a mortal sin." -- The Law of Christ, II, 356. While the question of sin is not within the scope of this study, this statement indicated that he considered that the omission of any canonical Hour involved a grave matter.

[26] Stanislaus, "What Proof is there for the obligation of the canonical Office", The Ecclesiastical Review, XLVIII (1913), 334.

grave obligation)."[27]

The only possible explanation for this opinion is that the legislator's purpose was so important that he commanded it sub gravi, but "to prove, however, from the purpose of the law the gravity of even a small part of the obligation imposed seems to be tantamount to saying that the law commands something serious because it is a serious law."[28]

Stanislaus rejects the reasoning, but apparently accepts the conclusion that a small Hour involves a grave obligation. Kelly, despite a lack of intrinsic reasoning to support the position, makes the startling conclusion: "The opinion that omission of a small hours constitutes grave matter is so common and dominating that it could be effectively changed only by ecclesiastical authority."[29]

Perhaps the reason for this common teaching is the presumption of subjective guilt, whether of neglect or of malice, in omitting a minor Hour. Häring, in his Law of Christ, could be interpreted in this way, when he combines the notions of guilt and of the gravity of the obligation in his treatment of the obligation of the minor Hour.[30] The only question at issue here is the objective judgment of the gravity of the obligation to recite a minor Hour. On that specific point, Häring, in a later article, stated that there are two opinions concerning the gravity, one claiming that it is not grave, the other that it is grave, and that in the latter opinion it is quite clear that "only stubborn disobedience makes the omission of an Hour greviously sinful." Though he continually introduces the subjective element,

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[27]Kelly, "Notes on Moral Theology", Theological Studies, XXIV (1963), 639.

[28]Stanislaus, "art. cit"., ibid., p. 335.

[29]Kelly, loc. cit.

[30]"Even careless neglect of so much as one canonical hour is generally held to be a mortal sin", -- The Law of Christ, II, 265.

apparently he holds that a minor Hour is not objectively a matter of grave obligation.[31] The opinion that a minor Hour is not a matter of grave obligation appears to be the only opinion that is in agreement with common sense, and therefore the only tenable opinion.[32]

2. The Obligation of the Entire Office

The much larger question must now be taken up: whether the obligation to recite the entire Office is of grave obligation. The opinion of the authors is unanimous, and authoritative statements form the Popes and the Roman Curia indicate that there is a matter of grave importance involved. However, a much better understanding of the divine Office, and of its place in the life of the Church and of the priest, has developed in the past few years. This was indicated in the new Code of Rubrics issued in 1960,[33] and more especially in the Constitution on the Sacred Liturgy of Vatican II.[34]

The understanding of the obligation cannot be divorced from the understanding of the divine Office itself, or from its purpose. The Constitution repeated the juridic obligation of reciting the divine Office; the gravity of the obligation must be judged within the context of the Constitution and of public worship in the Church.

> Art. 96. Clerici choro non obligati, si sunt in Ordinibus maioribus constituti, cotidie, sive in communi, sive soli,

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[31] HÄring, "A Closer Look at the Breviary Obligation", p. 298; this is Kelly's interpretation of the article also, -- "Notes on Moral Theology," ibid., 641.

[32] Kelly states that to equate a "notable part" of the Office with a small Hour is contrary to common sense, yet he insists that the "common" opinion which holds that it is of grave obligation must be followed. --"Art. cit.", ibid., p. 640.

[33] Novus Rubricarum Codex.

[34] Constitutio de Sacra Liturgia, Arts. 83-101.

obligatione tenentur totum Officium persolvere, ad normam art. 89.[35]

The commentators on the Constitution, Schmidt and Salmon, simply state that the Council did not decide on the gravity of the obligation; they seem to imply that it remains an open question, but they themselves do not venture an opinion.[36] Huftier has no hesitation in stating that it is a grave obligation simply quoting Jone as his authority, but making no reference whatsoever to the Constitution.[37]

If the gravity were to be judged simply on the basis of quantity of the matter involved, a good case could be made for a changed attitude. Since the time of the Code in 1917, the quantity of prayers has been drastically reduced, in 1955[38] in 1960[39] and in 1964.[40] But the obligation cannot be judged simply on quantity, for the Constitution was mainly concerned with the quality of the prayer, i.e., the correct and prayerful recitation of the Office, so that the purpose of the Office, "the sanctification of the whole day", might be achieved.[41] This attitude is spelled out when the Constitution specifically mentions that the use of the vernacular can be permitted, when Latin constitutes a grave obstacle to "praying the Office properly".[42]

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[35] Constitutio de Sacra Liturgia, Art. 96.

[36] "The Council deliberately refrained from pronouncing in the Constitution a solemn sentence on the question of grave or light obligation in this matter. Therefore, the ordinary ecclesiastical authority must be consulted."--Schmidt, "De Cursu Horarum", Ephem. Lit., LXXVIII (1964), 352; Salmon, "art. cit.", L'Ami du Clergé, LXXIII (1963), 758.

[37] Huftier, "Obligation du Breviaire", -- L'Ami du Clergé, LXXIV (1964), 602-605.

[38] S.R.C., decr. De Rubricis ad simpliciorem formam redigendis, Cum nostra aetate, 23 martii, 1955 --AAS, XLVII (1955), 218-224.

[39] Novus Rubricarum Codex, 26 iulii 1960.

[40] Paulus VI, litt. apost., Sacram Liturgiam, 25 ian. 1964.

[41] Constitutio de Sacra Liturgia, Art. 88.

[42] Ibid., Art. 101, § 1.

The purpose of the obligation is to ensure the offering of public worship, worship carried on in the name of the Church by persons legitimately designated to do so and through acts approved by the Church, referring to God, the saints or the beatified.[43] The priest is obliged to recite the divine Office he is the official pray-er, offering the official prayer of the Church. As a pray-er, devotion and attention must be part of his prayer, and hence the Council stressed the necessity for a correct recitation, namely to pray the Hours at their proper time, thus sanctifying the day, and it emphasized that communal celebration of the Office was always to be preferred and promoted.[44]

However it recognized that the priest is more than the official pray-er of the Church, for he sanctifies the day also by his pastoral activity. In fact, the pastoral office is given primacy over the divine Office. The Constitution on the Sacred Liturgy says the Office must be adapted to pastoral requirements. Modern conditions of daily life will obviously affect the priest's pattern of prayer, and so the reform of the Office must take those conditions into account.[45]

"Custom is the best interpreter of law", and it appears that there is a changed attitude toward this obligation today, both by the legislator and by the subject of the obligation. The important place of the Office in the Church's Liturgy is recognized, but it is not overemphasized; but the rubrics are to define appropriate instances when another liturgical service may be substituted for the Office.[46] Up to the present one's participation function never excused one from

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[43] Can. 1256.

[44] Constitutio de Sacra Liturgia, Art. 88, 99.

[45] Ibid., Art. 88

[46] Ibid., Art. 46

reciting the Office (except on Holy Saturday).[47] Prior to Vatican II a dispensation from or commutation of this obligation was very rare and could be granted only by the Holy See. The Constitution on the Sacred Liturgy indicated for ordinaries the power to make a commutation of and to grant a dispensation from the obligation. The recent practice of the Holy See and of bishops in granting dispensations is an indication of their interpretation of the law that imposes the obligation of the Office.

The Holy Father has granted members of the Near East Welfare Association the privilege of a commutation of the obligation of the divine Office to five decades of the Rosary whenever they travel sixty miles. This travel can be for any purpose. To become a member of this Association, the only requirement is the making of a donation in the amount of at least sixty dollars.[48] Ordinaries in the U.S. have made liberal use of their power to grant a dispensation or a commutation; some of the accepted causes for the granting of a complete dispensation are: attendance at an episcopal liturgical function, presence at a confirmation service, one's celebration of two Masses, one's travel of 100 miles on church business.

The cause required for a dispensation should be proportionate to the gravity of the law from which one is dispensed.[49] Travelling sixty miles could not normally be regarded as a grave inconvenience in our society; the causes accepted by the ordinaries in the United States would not normally be classified as grave causes.

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[47] A reply of the Congregation of Rites, which continued in effect until the new rubrics in 1960 stated that participation in the common recitation of an Office other than one's own did not fulfill the obligation; one had to recite one's own breviary afterwards. S.R.C., Marianipolitana, 27 ian. 1899, ad III -- Fontes, n. 6289.

[48] Priest-members of the Catholic Near East Welfare Association enjoy the following privileges granted by the Holy Father, Pope Paul VI: 1. The privilege of substituting five decades of the Rosary for the Divine Office on any day when one travels sixty miles. (Granted to Perpetual Members only). -- AER, CLV (1966), 409.

[49] Can. 84, § 1.

The Pope and the bishops realize that a correct recitation of the Office involves a recitation at the proper time of day, if thereby a sanctifying of the whole day is to be achieved. The law imposing this obligation surely envisions a recitation which is both correct and devout. In the present setup of the pastoral life, such a correct recitation could very easily serve to disrupt rather than to consolidate the work of a priest's day.

Apparently the attitude toward the law is that, while public worship is important, there are very few priests who do not voluntarily offer public worship every day by offering the Mass, the highest form of worship. The daily celebration of Mass is not of obligation. The sanctification of the day can be achieved in many ways, and obviously all pastoral activities are means of sanctification. The obligation of the divine Office in the present circumstances is not regarded as a grave obligation as is evidenced by the practice of the Holy See and of ordinaries when they grant dispensations.

It can be objected to this reasoning that the Holy Father's grant to the members of the Near East Welfare Association is a privilege, and hence cannot be used as an indication of the attitude of the Holy See on the gravity of the law.[50] The causes for a dispensation can be an indication not simply of the gravity of the law, but also of the capacity of the subject. The statements of St. Pius X undoubtedly regards this as a grave obligation.[51]

However to these objections it can be answered that this particular Apostolic privilege is not given to an individual or to a particular area, but to anyone who

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[50]Can. 67; Reg. 74, R.J., in Vio: Quod alicui gratiose conceditur, trahi non debet ab aliis in exemplum,"

[51]Cf. supra p. 132.

might choose to join the Association. Since the cause for a dispensation considers also the capacity of the subject, it seems that a judgment regarding the gravity of the obligation the capacities and circumstances of the life of the subject should likewise be taken into account.

The purpose of the law obliging priests to recite the divine Office is to ensure the priest's performance of public worship, specifically the public prayer of the Church, the divine Office, and thereby to sanctify the day for the Church and for themselves.[52] This purpose of public worship and sanctification of the day the priest can achieve in other ways, namely by offering the Mass and by undertaking pastoral activities. Both the pope and the bishops, as evidenced by their practice in granting dispensations, seem to indicate this. The subject of the obligation are coming more and more to realize this also, and consequently do not seem to regard the obligation of the divine Office as a grave obligation in itself.

Based on the facts enumerated above, and especially in view of the ease which dispensations from the recitation of the breviary are obtained the opinion which now considers the obligation of the divine Office on the part of those who are in major Orders to be a light obligation seems to have some measure of probability.

3. The Obligation of Benefice-holders and Religious

The obligation incumbent on benefice-holders is strengthened with a sanction, the sanction of forfeiture of revenue in the event of non-fulfillment.[53] This forfeiture seems to indicate that the lawgiver regarded this law as setting up a grave obligation

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[52] Cf. De Presbyterorum Ministerio et Vita, n. -- AAS, LVIII (1966), 998.

[53] Can. 1475, § 2.

and this loss of revenue has been the sanction written into the law for ten centuries.[54] Since this sanction continues, and thereby imposes an obligation in justice for failure to fulfill the obligation, the obligation of the benefice-holder is manifestly a grave obligation.

The choral obligation to which religious Orders are held arises primarily from the constitutions of the Orders. The obligation as there enumerated is accepted by and written into the general law.[55] The gravity of this obligation must be judged according to the original Rule in the constitutions.[56] The obligation has generally been regarded as grave for the community. For the individual religious the obligation is only an indirect obligation which received its measure from the constitutions, but the constitutions likewise set up the obligation as a grave one.[57] The Constitution on the Sacred Liturgy has not changed this, since the obligation relates to the Office in choir, and this the Council has made every effort to preserve and continue.

Article II. Suggestions for a Revised Law

To truly evaluate this obligation it is necessary to determine the purpose of the law by which the obligation is imposed. The Constitution on the Sacred Liturgy insists that the purpose of the Office is "the sanctification of the whole

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[54] Cf. supra p. 18.

[55] Can. 610, § 1.

[56] Schaefer, De Religiosis, n. 1199; Goyeneche, De Religiosis, n. 78; Jone, op. cit., I, 537; Vermeersch-Creusen, op. cit., I, n. 768.

[57] The apostolic constitution, Sponsa Christi, specifically states that the Church binds nuns under grave obligation by law according to their Constitutions to perform this prayer by daily reciting the canonical Hours. -- const. Sponsa Christi, 21 nov. 1950, AAS, XLIII (1951), 17.

day." The Office began as private prayers, then became the Church's public prayer, and continued as such to the present day. It was not until the 13th and 14th century that it became obligatory for priests in virtue of their Orders; up to that time attachment to a church or to a benefice was the sole basis of the obligation for secular clerics. In addition, until that time private recitation of the Office was unknown, the legal obligation was concerned solely with a communal recitation. An obligation of private recitation meant an obligation to say the prayers of one's choice in private, since breviaries were not a common feature in clerical circles until at least the 15th century.

When the Church obliges the priest to recite the divine Office every day, it obliges him to sanctify the entire day by means of the reading of the Hours of the Office at their appropriate times. But this law is based on a much wider obligation, the moral obligation which the priest has to offer prayers every day for the Church. By his ordination, he is obliged to pray for the Church, since he is the ordained minister of the Church. In the early centuries the ordained minister was obliged to be present at the Office to read the prayer at the end of the canonical Hour, and thus to make the service a liturgical service.

It was because of this moral obligation to pray as a minister of the Church that St. Thomas held that a cleric, by the fact that he was a cleric, and especially if he was in holy Orders, was bound to recite the divine Office, because the divine Office had been, and still was, the official prayer of the Church. This obligation for priests in virtue of their Orders arose through a custom, a custom based on this reasoning of St. Thomas, which was followed by many canonists and theologians

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[58] S. Thomas, Quodlibet V, Art. 29 -- Opera Omnia S. Thomas Aquinatis, XV, p. 528.

of the 13th and 14th centuries, but the custom never took root until the recitation of the Office had become a matter of devotion.

The structure of the Office has changed drastically over the centuries; originally the content was a matter of the free choice of the one conducting the service, there was a great number of Scripture readings with comment. These comments later became readings from the Fathers, in fact many of the Patristic readings were originally sermons or comments on the Scriptures that the Fathers delivered during the celebration of the divine Office. The psalms were always part of the Office, but not a major part. The present stereotyped pattern was forged in the monasteries, and set up for a communal celebration by a two-part choir. The Office was structured as a community prayer, which it is, and that structure is still incorporated in our present breviaries.

The Office was adopted by the clergy at a time when pastoral work was thought to consist almost exclusively in responsible for divine worship. The clergy were so numerous that they could still form communities or colleges to celebrate the Office properly, and the spiritual life found its fulfillment in vocal prayer. In fact the breviary was the only spiritual reading that many of them could have when the possession of the breviary became common.[59]

Over the centuries this situation has changed; in the past 600 years there has been a swing to personal devotions, and hence the growth of the private recitation: meditation and spiritual reading became the backbone of the spiritual life, while at an earlier time the divine Office provided the only type of spiritual

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[59]Jungmann, Public Worship (Collegeville, Minn.: Liturgical Press, 1957), p. 165.

reading. The popularity of the Quignon Breviary indicated a need for a new approach, yet only today are the innovation of Cardinal Quiñones being put into effect in the reform of the Roman Breviary as it is now in progress.[60]

The divine Office has always been and continues to be the public prayer of the Church.[61] Public worship is liturgical worship. "Those sacred actions are 'liturgical' which, from the institution of Jesus Christ or the Church and in their name are carried out in accordance with the approved liturgical books by persons legitimately deputed to give worship to God, the saints and the blessed."[62] When the Office was recited by the laity alone, or by a convent of sisters (moniales), it was simply a pious exercise because there was no minister, priest or deacon present.[63]

To constitute public worship, the emphasis has always been on "being legitimately deputed" to worship on behalf of the Church. With regard to the divine Office it meant those who were obliged by law to recite the Office. The Constitution on the Sacred Liturgy specifically stated that members of any institute dedicated to acquiring perfection and bound to the recitation of the Office by their constitutions thereby perform the public prayer of the Church, as do those who, in virtue of their constitutions, recite even the short Office. There is an exhortation that the laity join in this prayer and recite it themselves.[64] Here the emphasis is on the prayer itself, and on the communal aspect of the Office, not on the person deputed by the law of the Church.

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[60] Cf. Notitiae, I, pp. 150-156; 206-214.

[61] Constitutio de Sacra Liturgia, Art. 90.

[62] S.R.C. instr. De Musica Sacra et Sacra Liturgia, 3 sept. 1958, n. 1 -- AAS, L (1958), 632. The translation is from O'Connell, Sacred Music and Liturgy (Westminster: The Newman Press, 1959), p. 18.

[63] Martimort-Picard, Liturgie et Musique (Paris: Editions du Cerf, 1959), p. 24.

[64] Constitutio de Sacra Liturgia, Art. 98-100.

The Constitution makes liberal provision for dispensation from and commutation of the obligation, something that is made necessary by the demands of the pastoral life, for it may no longer be feasible for the priest to recite the Office at different times during the day, yet it is specifically set up to be read at specific times of the day. If the Office is commuted to, for example, the Rosary, does the Rosary become a liturgical prayer? The Rosary is in that instance of obligation for this person who has been legitimately deputed to recite it instead of the Office. It fulfills all the requirements of a liturgical prayer except for the fact that it is not contained in the liturgical books. The Office does not possess any intrinsic quality which makes it a liturgical prayer; it is approval by the ecclesiastical authority which makes any prayer liturgical.

The point to be made is that from the earliest times the divine Office has been the public prayer of the Church, but it is only more recently that it has become a matter of obligation for the cleric in major Orders. The primary purpose of the divine Office has always been and still is the "sanctification of the whole day". Private recitation flourished in the 15th century, a time when the private recitation of the Office was a vital part of the priest's spiritual life. Priests freely choose to recite the divine Office because they found it to be the best means of sanctifying their day, and in that way praying for and on behalf of the Church. It was at that time and in those circumstances that the customary obligation on clerics in major Orders took root.

The law which obliged priests to recite the divine Office arose because the Office had become the personal prayer of the priest. The idea of promoting the Office as a personal prayer of the priest has continued to the present day, and with good reason, because the Office is first of all a prayer. It is the public

prayer of the Church, and should first of all be a true prayer for the person reciting it. The customary obligation arose when the Office was undoubtedly a prayer for the priest.

Since the obligation for those who are in major Orders invariably involved an individual recitation, the obligation should consist of a prayer that can be made a personal prayer, in the sense that the object of the obligation readily inspires devotion and piety. At the present time the Office may fail to be such a prayer. Contemporary spirituality demands freedom of expression, freedom to choose one's own method of prayer and devotion. Obliging a priest to recite in private what is meant to be a public vocal prayer is hardly conducive to devotion or fervent prayer.

Originally the obligation of the private recitation was simply an obligation to say some prayers; the priest was completely free to choose his own prayers, since he normally did not possess the books necessary for the Office. When private recitation of the breviary flourished, it flourished because clerics choose to recite it as their form of prayer.

The obligation of the divine Office is based on the priest's obligation to pray. His obligation to pray will always remain, both his obligation to seek personal sanctification and his obligation to pray for and on behalf of the Church, but perhaps it might be more profitable, both for the priest and for the Church, if this obligation were stated in more flexible terms, so that there would be allowed to him the freedom to choose the types of prayer which are most suited to his present position, whether he chooses Bible reading, meditation, the Rosary, etc. This freedom to choose one's own form of prayer is simply a return to the original position of those who were bound to be present at Office in church but for a legitimate reason were unable to attend.

PART THREE

THE ORIENTAL LAW

CHAPTER VIII

THE OBLIGATION OF THE DIVINE OFFICE IN THE ORIENTAL CHURCHES

The celebration of the divine Office in the Oriental Catholic Churches did not evolve in the same way as in the West. Public celebration of the Office continued through the centuries to be the normal practice, and private recitation was not common, but where it was found its introduction was due, in large measure, to the Latin influence.

Article I. General History

In the Code of Justinian there is a decree issued between 528 - 530 which commands all clerics attached to churches to chant the nocturns, matins and vespers in Church.[1] "This reflects a custom that was then existing in the East, the Emperor confirmed two obligations: a real one, to assure the celebration of the Office in all churches; the personal one, the duty to be performed by all clerics. It was not an allusion to private recitation."[2]

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[1]Sancimus ut omnes clerici per singulas ecclesias constituti per seipsos et nocturnas et matutinas et vespertinas preces cantent, neve in consumendis tantummodo rebus ecclesiasticis clerici esse videantur, nomen clericorum gerentes, ministerio tamen Domini Dei quod clericorum est se subtrahentes . . . nam si multi laici, ut animae suae consulant, ad sacrosanctas ecclesias confluentes studiosos se circa psalmodiam ostendunt, quemadmodum non absurdum est clericos, qui ad hoc ordinati sunt, munus suum non implere? -- Codex Iustinianus, Lib. I, tit. S 41 (42), n. 24 (10) 25; in Krueger, Codex Iustianus, in Corpus Iuris Civilis, Vol. II(6. ed., Berolini, 1895), p. 28.

[2]Dictionnaire de Droit Canonique, II, "Breviaire" (Paris, 1937), 1102.

The norms of this decree were very much the same as those that existed in the West. There was an obligation for the choral recitation by the clerics of the churches, but whereas this evolved into an obligation for a private recitation on the part of clerics in major Orders in the West, this did not happen in the Oriental Rites; private recitation proved an exception and was seldom deemed to be of obligation.

The recitation of the Office became subordinated to the celebration of the Mass; if the priest celebrated Mass he recited part of the Office beforehand.[3] This practice is clear from the directives of various Popes to the Oriental Churches.[4]

In the light of this history, it was not surprising that the proposed chapter of Vatican I, which placed an obligation on "clerics of every rite and nation . . . for the daily recitation of the divine Office in Church or in private, under pain of grave fault,"[5] was criticized by the Eastern Prelates. Bishop Joseph Papp-Szilagyi of the Greek Rumenian Rite took exception to the decree in the name of the Oriental Catholic Church. He said that it would be impossible for the Oriental priests to fulfill the obligation of the divine Office "quotidie et integre", because they did not have a breviary, and their divine Office was contained in sixteen folio volumes; so to bind the Oriental cleric sub gravi would be unthinkable. After mentioning that his rite had its own particular law on this matter, he proposed that there be added to the chapter the phrase: "Clerics of

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[3] Loc. cit.

[4] Cf. e.g., Innocent IV, ep. Sub Catholicae, 6 mart 1253, 8; cf. supra. Chapter II.

[5] Cap. II, De vita et honestate clericorum, in Collectio Lacensis, VII, 660.

Catholic Oriental Rites ought to satisfy the obligation 'iuxta suum morem ac legem dioecesanam'."[6]

All the Oriental Rites had their own particular law or custom governing this celebration of the divine Office, and in the Motu Proprio, Cleri Sanctitati, August 15, 1957 of Pope Pius XII, the suggestion of Bishop Papp-Szilagyi was followed.

Article II. Canon 76 of Cleri Sanctitati

> Clerics who are ordained subdeacons or (vel) in major orders, with the exception of those mentioned in cc. 157, 158, are obliged to recite the divine office publicly or privately in accordance with the norms of particular law.[7]

This canon simply confirms the existing discipline of the particular Oriental Churches, and this approach is based "on the principles derived from earlier declarations of Roman Pontiffs."[8] This is clear in the letter of Pope Innocent IV, Sub Catholicae, in which he uses the words, "more suo", regarding the obligation to recite the divine Office among the Greeks of Cyprus.[9] Benedict XIV used the phrases, "more suo", and "more suae nationis".[10]

No new law, then, was brought into existence, rather the actual discipline was confirmed. Wherever particular law decrees such an obligation, Canon 76 does

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[6]Mansi, L, 545 - 546.

[7]Canon 76: Clerici in subdiaconatu vel in maioribus ordinibus constituti exceptis iis de quibus in can. 157, 158, obligatione tenentur divinum officium publice vel privatim persolvendi iuxta praescripta iuris particularis. Trans. in Pospishil, The Law of Persons, (Ford City, Pa.: St. Mary's Ukrainian Church, 1960), p. 70.

[8]Wojnar, "The Code of Oriental Canon Law De Ritibus Orientalibus and De Personis", The Jurist, XIX (1959), p. 290.

[9]Cf. supra, p. 24.

[10]Benedictus XIV, const. Etsi Pastoralis, 26 maii 1742, § VII, n. V; Eo Quamvis Tempore, 4 maii 1745, § 45, supra, p. 47, Fontes, n. 328.

not change it, but leaves it in the sphere of particular law to determine the scope of the obligation. "The whole discipline depends on the particular law, and is to be interpreted according to the norms of the particular law."[11] If there is an obligation in particular law, Canon 76 confirms that and gives it the approval of the supreme legislator; if particular law is silent concerning the obligation, Canon 76 is also silent.

1. The Subject of the Obligation

"Clerici in subdiaconatu vel in maioribus ordinibus constituti." The foundation of the obligation is major Orders, but unlike the Latin rite, the subdiaconate is not a major Order in the Oriental rites. This was definitively settled by the Motu Proprio, Postquam Apostolicis Litteris.[12] Prior to that the particular Church could decide which were the major Orders, so that the Armenians, Ethiopians and Malabars included the subdiaconate among the major Orders.[13]

Here, however, the subdiaconate is not equated with major Orders in the matter of the obligation, as is done in other canons of Cleri Sanctitati.[14] The use of the disjunctive partical, vel, emphasizes this, and the inclusion of the term, in subdiaconatu, was made necessary because in the rites that accepted the subdiaconate among the major Orders, the obligation to recite the Office begins with the subdiaconate; the particular law is the governing element in each Church.

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[11]Puthiakunnel, Syro-Malabar Clergy and Their General Obligations, (Pachalam, Kerala State: Vincentian Publishing Bureau, 1964), p. 147; cf. Pospishil, op. cit., p. 71.

[12]Canon 310: Nomine ordinum maiorum intelliguntur presbyteratus et diaconatus; minorum vero ordinum, ceteri.

[13]Galtier, Le Mariage, (Beyrouth: Université St. Joseph, 1950), p. 135.

[14]Subdeacons are bound by the same obligation as those in major Orders in certain instances in the general law regardless of rites; e.g. in celibacy, Canon 70 of CL. S.; Can. 62 § 2 of Crebrae Allatae makes the subdiaconate a diriment impediment to marriage.

This canon is in line with the thinking of Vatican II which stated in its Decree on Catholic Churches of the Oriental Rite that the legislative authority of each particular Church would decide about the subdiaconate and the minor Orders and their rights and obligations.[15]

2. Public or Individual Celebration

The canon uses "publice vel private persolvendi", because the obligation of some rites refers to the public celebration of the divine Office only, while in others private recitation is also obligatory. The general law does prescribe public celebration on certain occasions. Canon 401 of Cleri Sanctitati states that bishops are to see:

> 1. That in their own cathedral at least part of the divine Office is celebrated daily, where there is such a custom, according to the lawful custom of each rite.
>
> 2. Also that in every city at least in one or other church and at least on the Sundays and feastdays and chief holydays of saints according to the rule of their own calendar, and on their vigils, the divine Office be solemnly celebrated and that the pastor or rector and other ministers of the church assist at them in their official capacity. In regard to other priests and clerics of the city, the prescripts of particular law are to be preserved.[16]

All Oriental pastors are bound to perform the public celebration of the divine Office.

> 1. The Pastor must celebrate the divine offices (divina officia) . . .

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[15] N. 17, Decretum De Ecclesiis Orientalibus Catholicis, 21 Nov. 1964 -- AAS LVII (1965), 76-89. Note 22 states: . . . "The canon proposes a return to the ancient discipline of the individual Churches, regarding the obligations of the subdiaconate, in derogation of the common law of Cleri Sanctitati."

[16] Cleri Sanctitati, Can. 401.

> 2. (The Pastor) should celebrate on Sundays and feast days as well as the divine liturgy, at least part of the Office per se aut per cooperatores, according to the rules of his rite and the instructions of the local Hierarch.[17]

Public celebration is seen to play a very important role in the Oriental Churches, and this is emphasized again by Vatican II.

> Eastern clerics and religious should celebrate in accordance with the prescriptions and traditions of their own established custom the divine Office, which from ancient times has been held in high honor in all Eastern Churches. The faithful too should follow the example of their forebears and assist devoutly as occasion allows at the divine Office.[18]

This article has the character of an exhortation and does not affect the existing law.[19]

3. Particular Law

In investigating the particular discipline of each individual Church, one must investigate three points: (1) the subject of the obligation, does the obligation arise with subdiaconate or diaconate? (2) the nature of the obligation, does the obligation refer to the public or a private recitation? (3) the gravity of the obligation, does the obligation bind sub gravi?[20]

A. Albanians

In his letter to the Italo-Greeks, Etsi Pastoralis, Pope Benedict XIV stated that all in sacred Orders should say the canonical Hours more suo; and should recite

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[17] Cleri Sanctitati, Can. 508, § 1, 2.

[18] Concilium Vaticanum II, Decretum De Eccles. Orient. Catholicis, n. 22.

[19] Pospishil, Orientalium Ecclesiarum (New York: Fordham Univ., 1965), 57.

[20] Cf. Wojnar, "art. cit.", -- The Jurist, XIX (1959), p. 290.

matins before celebrating Mass.[21] However the Synod of Grottaferrata (1940) only recommended that priests recite the divine Office.[22] It also laid an obligation on the canons of the cathedral to attend all the public choral Offices daily, and bound the chaplains to attend at least Vespers.[23]

B. Ukrainians

The Synod of LVIV (Lwow, Lemberg) in 1891, reflects the ruling discipline for the Ukrainians in the Province of Galicia. This Synod stated very clearly that deacons and priests were bound "sub gravi" to the recitation of the divine Office.[24]

But a question was raised as to the binding force of this statute, since the text seemed to imply that it required approval by the Holy See ("accedente praesertim S. Sedis confirmatione"), and the Holy See gave approval only "in forma communi", on May 1, 1895. Wojnar in discussing this makes two points:

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[21] Etsi Pastoralis, 26 Maii 1742, VII, n. V, "Sacerdotes et quicumque sunt in sacris Ordinibus constituti horas canonicas more suo dicant, et priusquam Missam celebrent, officium matutinale curent." Fontes of CIC (Codex Iuris Canonici), n. 328.

[22] Tit. I, Cap. I, Art. 1: "Quindi si raccomanda vivamente che ciascun sacerdote reciti ogni giorno, l'orthros, le ore, l'esperinos, l'apodipnon." Costituzioni del Sinodo Grottaferrata (Grottaferrata, 1943), p. 21.

[23] Tit. I, Cap. III, Art. 83: "I protopresbiteri cattedrali sono tenuti ad assistere all ufficiatura corale giornaliera, comprendente l'orthros (Matins), le ore (an Hour), il vespre (Vespers), e l'apodnipon (Compline), da stabilirsi secondo un conveniente orario; quelli che hanno cura d'anime son tenuti ad assistere almeno al vespro." -- Ibid., p. 40.

[24] Tit. IV, Cap. III, n. 5: Quoad ipsam Horarum canonicarum persolutionem in specie, probe intelligant sacerdotes et diaconi, easdem non esse orationes qualescumque, sed publicas et quidem oblatas a sacris ministris nomine Ecclesiae legatione apud Deum pro populo fungentibus, quam ob rem et omissio earundem, proveniens ex negligentia et socordia, grave esse peccatum, et quidem non solum si omittatur totum Officium aut portio aliqua notabilis, sed etiam quaecumque integra eiusdem pars, licet sit una ex octo superius enumeratis. Quaecumque itaque circa recitationis eiusdem officii obligationem hucusque fuerit opinio, modo tamen post Synodi definitionem opinionum varietas evanescere debet, imposita clara et expressa obligatione pro clericis in sacris constitutis, accedente praesertim S. Sedis confirmatione. -- Acta et Decreta Synodi Provinciali Ruthenorum Galiciae, 1891 (Romae, 1896), p. 46.

(1) The Synod did not enact a new law concerning the obligation, but simply gave an official declaration on a law already introduced by custom in the Ukrainian Church, (2) The statute did not require Apostolic confirmation as the constitutive element of the obligation; the phrase, "accedente . . ." was simply an additional element, not a condition for the obligation. He argues further that in approving the acts "in forma communi", the Congregation would not have allowed this text concerning a grave obligation to be included, if such an obligation did not exist.[25]

Pospishil denies that such a custom did exist before the Synod of Lviv; he argues that the Ukrainian clergy of Galicia before the nineteenth century were sophisticated men of learning who would not have introduced a strict law by custom. Then he asks, what if they did in fact introduce a custom because they erronously believed they were bound by a general law of the Church that bound all priests to private recitation--this was the Latin law of the time. Such a custom was founded on error, and therefore could have no legal binding force. Since the Synod was given approval only in forma communi, it did not enact a new law.[26]

The question seems to revolve around the existence or non-existence of a custom of private recitation of the divine Office among the clergy of Galicia, before 1891, which they considered to bind "sub gravi". If such a custom did exist, then the statute of the Synod of Lviv would not require apostolic approbation to make a binding obligation, because such an obligation already existed.

Wojnar clearly believes that such a custom existed. Pospishil begins by stating that there was no such custom, and then says that even if there was such a

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[25]Wojnar, "Decree On the Oriental Churches", The Jurist, XXV, (1965), 233.

[26]Pospishil, Orientalium Ecclesiarum, pp. 58 - 59.

custom, it was founded on a mistake and thus had no legal force. The Synod of Lviv obviously believed such a custom existed, as is clearly stated in the statute in question, and this is also shown in another statute when it dealt with public celebration of the Office. It stated that it is an ancient custom for clerics to recite privately the parts of the divine Office not recited in Church. "All priests ought to observe this norm in reciting the divine Office privately on all other ferial days on which no Office is celebrated in church."[27]

Pospishil's point that the Ukrainian clergy were "sophisticated men of learning" is well taken, but precisely because of this they were all the more apt to adopt the ways and customs of Latin priests. In this period of the history of the Ukrainian Catholic Church the Latin influence was great, because the Oriental clerics considered that they were regarded as inferior to the Latin clergy and in the struggle for equality they often voluntarily accepted Latin customs. It would seem to be quite natural for them to imitate the custom of reciting the breviary in private every day, since that was an intimate part of the life of the Latin clergy.

In the Synod of Zamost, 1720, included in the list of questions to be asked

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[27]Tit. IV, Cap. III, 3: . . . In ecclesiis vero Cleri sacularis observantia haec aliquam restrictionem patitur, siquidem consuetudo praesens fert, ut Vesperae, Matutinum et Hora prima in ecclesiis quidem cathedralibus quotidie publice celebrentur, tres vero Horae postremae et etiam Completorium nec non officium mediae noctis ad recitationem privatim remittantur. In ecclesiis autem parochialibus nonnisi diebus Dominicis et festis persolvuntur de more Matuninum et Vigiliae nocturnae cum hora prima mane, et Vesperae secundae post meridiem. Hanc itaque consuetudinem apud nos ab antiquo receptam animarum curatores diligenter servent, reliquas autem officii divini partes sibi privatim recitent, iuxta breviandi normam compositam a Comissione liturgica Leopolitana, atque a S. Sede Apostolica probatam. Quam normam in recitatione Officii divini privatim observare debent sacerdotes etiam omnibus aliis diebus ferialibus nullum Officium in Ecclesia celebrari solet. -- Acta et Decreta Synodi Provincialis Ruthenorum, Galiciae, 1891, p. 45.

of pastors at the time of episcopal visitation was: Does he recite the divine Office daily at the proper hours, and where?[28] In that list the Latin influence is obvious, and there too is seen the implication that the Office is to be read daily. The evidence of the Latin influence, combined with the statements of the Synods of Zamost and Lviv favor the existence of the custom, which would mean that priests and deacons of the Ukrainian Rite in the Province of Galicia had the grave obligation of a private recitation of the divine Office daily. An added factor concerning the validity of the statute of the Synod of Lviv is that it is quoted as a source in the footnotes to Canon 76 of Cleri Sanctitati.

"The same discipline holds for Ukrainian deacons and priests oriundi ex Galicia, even though they are outside the province of Galicia, according to the law is personal (non-territorial)."[29] This means that the Ukrainian priests and deacons in the United States are bound by these obligations.[30]

C. Rumenians

The Synod of Fogaras, 1872, obliged only canons to the recitation of the canonical Hours every day.[31] This obligation could be fulfilled in public or in

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[28]"An quotidie recitet divinum officium statis horis, et in quo loco"? Synodus Provincialis Ruthenorum, 1720, in Collectio Lacensis, II, 68.

[29]Wojnar, The Jurist, XIX (1959), 291: Pospishil agrees that the law is personal, -- Orientalium Ecclesiarum, p. 58. Wojnar says that the late Cardinal Coussa also supported the stricter opinion, when he drew the distinction between the statutes of Lviv that were territorial on the one hand, and personal or non-territorial on the other, the latter expressing the discipline of the particular Church. -- The Jurist, XXV (1965), 234.

[30]Cf. Cum data fuerit, Art. 3: This decree to the Ukrainian Bishops of the United States demanded that the rites and discipline peculiar to this Church should be observed here. -- AAS, XXI (1929), 153.

[31]Membra capituli obligantur episcopo in omnibus functionibus, sacris assistere, horas canonicas omnibus diebus absolvere. -- Cap. VI, Concilium Provinciale Primum Alba-Iuliense et Fogariense, in Mansi, XLII, 520.

private, according to the note which, during the process of approbation in Rome, was added to the acts of the Synod. This note further stated that those who were in sacred Orders were in no way bound to recite the divine Office in virtue of their Orders,[32] but the Synod did recommend that priests recite canonical Hours before celebrating Mass.[33]

D. Melkites

At the time of the promulgation of Cleri Sanctitati the discipline of the Melkite Church regarding the obligation was doubtful, because the canon of the Synod of Ain Traz, 1909, did not determine the limits of the obligation. The patriarchal Synod of Alexandria and Ain Traz, 1958, the acts of which were promulgated in Damascus by Patriarch Maximos IV on March 9, 1959, decreed "that deacons and priests and bishops (with the express exclusion of subdeacons)are obliged every day to the public or the private recitation of Vespers, small Compline, Matins and one of the Hours."[34]

E. Syrians

The Synod of Sharfeh in 1888 obliged all deacons, priests and bishops to publicly recite all the canonical Hours every day. If they could not attend choral

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[32]At enim vero nulli dubium esse potest hanc sententiam ita esse accipiendam, ut intelligamus patres synodi solos canonicos et nullo modo ceteros sacerdotes ad horas canonicas obligatos renuntiasse; quin etiam et hoc insuper intelligendum est, ipsos hos canonicos, non choratim id est eo modo quo in choro officium recitatur, sed quomodocumque officium recitare posse; quod quidem ex more, qui apud Rumenos invaluit, plurimum ita fit, ut eo tempore quo sacra liturgia celebratur, canonici in choro adstantes, privatim et unusquisque pro se, officium recitent. -- Mansi, XLII, 767.

[33]Synodus . . . atque inculcet convenienter ad sacram liturgiam celebrandam horarum canonicarum recitatione praeparationem. -- Ibid., 582.

[34]Wojnar, in The Priest, Vol. 18 (1962), p. 460; cf. proch-Orient Chretien, 1959, p. 213, where the acts of the synod were referred to.

celebration they were obliged to recite the divine Office in private.[35] The Synod did not state specifically whether or not the obligation was a grave one but from its insistence on the obligation, and because of the fact that it spelled out in detail the situations in which one was excused from fulfilling the obligation, it seemed to consider the obligation as a grave one.[36]

F. Maronites

The Synod of Mount Lebanon, 1736, decreed:

> Every cleric should have all the books necessary for the fulfillment of his office. They should take part zealously in the daily and nightly divine Offices in church, especially on Sundays and feastdays, unless on account of some illness they are legitimately impeded; in which case they should recite the whole office at home with devotion. . . .[37]

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[35]Cap. VI, Art. IV: 1. Inter praecipua officia quae sancta Ecclesia clericis ordinum maiorum, id est diaconis, presbyteris, et episcopis imposuit, est, ut quotidie persolvant precem obligatoriam quam Ecclesia clero statuit quaeque dicitur officium canonicum, in omnibus eius horis, omnibusque eius partibus ac requisitis. Haec obligatio clericum absoluto modo astringit, ita ut si recitationi chorali non assistit, debeat seorsum seu privatim persolvere orationem canonicam sine immutatione.

Cap. VI, Art. IV: 2. In choro quidem debent clerici absolvere orationem singulis diebus statutam sive ex breviario, sive ex officio feriali, iuxta rationem diei. Extra chorum autem qui nequit breviario absolvere orationem statutam, loco illius oret ex officio feriali. Synodus Sciarfensis Syrorum, 1888, (Romae, 1896), p. 198. The Synod expressed the same idea when dealing with the choral Office:

Cap. III, Art. VI, n. 14, Diaconus vel presbyter vel alius altioris ordinis qui non adfuit officio canonico ab initio, prosequatur officium cum choro usque ad finem et post finem suppleat privatim id quod omisit. -- Ibid., p. 48.

[36]Cap. VI, Art. IV, n. 3: Excusatur qui ad officium canonicum absolvendum tenetur ab eius recitatione si id moraliter vel physice impossible ipsi sit, vel si id possit nisi cum extraordinario incommodo vel damno. -- Ibid., pp. 198 - 199. Then it lists the cases; lack of a book, illness, confessions all day, preparation for preaching that day, a long journey on horseback, dispensation.

[37]Part III, Cap. I, n. 13: Unusquisque clericus libros habeat ad exercitium sui ordinis necessarios. Divinis officiis tam diurnis quam nocturnis assidue in ecclesia intersint ac praesertim dominicis et festis, nisi ob aliquam infirmitatem sint legitime impediti; quo casu, quemadmodum et horas in diebus ferialibus, domi totum officium ea, qua par est, devotione corporisque compositione recitent. -- Synodus Montis Libani, 1736, in Collectio Lacensis, II, 263.

This law, according to one writer, was dependent on pre-synodal legislation and tradition.[38] He thinks that the law depended on the Liber Directionis[39] and on the exhortation to the new deacons in the Maronite Pontifical. This seems to be based on the fact that the breviary of 1731 was not obligatory on secular priests. In fact "tradition clearly shows that the seven canonical Hours were never imposed on the secular clergy. . . . Up to the time of the Synod of 1736 only three hours, matins, vespers and the nocturnal hours were binding on a priest."[40] He concludes that there is a grave obligation on clerics in major Orders to recite simply the three Hours of Matins, Vespers and the Nocturnal Hours in private every day.[41]

G. Chaldeans

The footnote of Canon 76 indicates Canon 15 of the Synod of Mar Isaac in 410 as a source of particular law in this matter for the Chaldean Church, and since that canon affects the Malabar Church also, it is fully discussed by Puthiakunnel in his doctoral dissertation.[42]

Canon 15 of Mar Isaac states: "Every priest not taking part in the prayer and sacrifice . . . shall be suspended from his office", the deacon and sub-deacon were also bound to attend, and were to be punished if absent.[43] The canon

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[38]Breydy, "La Portée de l'Obligation à l'Office Divin chez les Maronites", L'Orient Syrien, III (1958), p. 253.

[39]This is a collection of nomocanons in the arabic language proper to the Maronite Church, made in 1059 by a certain David, a Maronite metropolitan. Cf. Coussa, Epitome Praelectionum De Iure Ecclesiastico Orientali (2 vols., Romae: Pontificium Institutum Utriusque Iuris, 1948), I, 186.

[40]Breydy, "art. cit.", L'Orient Syrien, III (1958), 262.

[41]D'abord, la gravité de l'obligation des clercs maronites in sacris à reciter en privé les trois Heures quotidiennes de l'office divin, est la seule, à notre humble opinion, qui puisse jouir de fondement en raison et en droit.-- Ibid., 263.

[42]Cf. Puthiakunnel, Syro-Malabar Clergy and Their General Obligations.

[43]Ibid., p. 129.

refers to the public recitation, but as Puthiakunnel points out, taken in its context, it could not be regarded as a grave obligation,[44] and in view of the general survey of legislation of the early Church,[45] this test proved no more than a strong exhortation to participate in public recitation.

A decree of the Sacred Congregation for the Propagation of the Faith which concerns the obligation among the Chaldeans stated: "Those who do not recite or chant the canonical Hours in church, are bound sub gravi to recite the whole psalterium privately each week according to the distribution made for each day by Archbishop Diarbekir. . . ."[46] The decree explicitly stated that the Chaldean clergy were bound sub gravi to the private recitation, but it must be asked what was the binding force and impact of this decree. Up to the sixteenth century the Chaldean clergy did not consider themselves under a grave obligation, so that the decree was contrary to custom and an attempt to introduce the Latin usage. The question posed to the Congregation indicated that it would have been impossible for the clergy to fulfill the obligation because of the lack of a suitable book.

The Synod of Rabban Hormizd (June 7-21, 1853) dealt simply with the abbreviation and a new edition of the Office.[47] The current opinion on the

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[44] Ibid., p. 154.

[45] Cf. Chapter I.

[46] Cum sacerdotes et diaconi catholici ritus chaldaici careant breviariis nec possint illa habere cum non extent, sed tantum habeant libros chorales, quomodo providendum cum iis qui non recitant horas canonicas in ecclesia? Patres eminentissimi responderunt: Qui non recitant seu canunt horas canonicas in ecclesia, teneantur sub gravi privatim recitare integrum psalterium in qualibet hebdomada, iuxta distributionem faciendam per singulos dies ab archiepiscopo Diarbekir, donec de mandato Sacrae Congregationis edatur integrum officium ipsis conveniens. Hoc decretum summus pontifex Clemens XIII probavit die 30. martii, 1760 anni. -- Mansi, XLII, 902-903.

[47] Vosté, "Les Actes du Synode Chaldéen, "Codificazione canonica orientale, Fonti, Serie II, Fasc. XVII (Typis Polyglottis Vaticanis, 1942), pp. 68 - 69.

seriousness of the obligation of reciting the divine Office is expressed by the Chaldean Patriarch, His Beatitude Mar Paul II Cheikho, Patriarch of Babylon of the Chaldeans:

> The very words,'Zloka Kanonaitha' i.e. canonical prayers, suggest that it is something obligatory. A priest who does not recite the divine Office is not worthy of the name. Regarding the gravity of the obligation, the persuasion of centuries old tradition is that there is no obligation 'sub gravi', as in the Latin Church. We wish to continue the ancient discipline for the Chaldean Church, and do not intend to impose the divine Office on our priests under grave obligation, thus multiplying the occasion for mortal sin.[48]

In the Chaldean Church, then it can be said that the practice indeed is that there is an obligation to recite the divine Office daily, but this obligation does not bind "sub gravi".

H. Malabars

The Canon Law of the East Syrian or Chaldean Church was almost fully in use in the Malabar Church, and was followed up to the sixteenth century. The Synod of Diamper in 1599 marked a new period of legislation for the Malabar Church, and it greatly influenced later practice in the Church. This synod was an attempt to Latinize the Malabars and their liturgy, but today the synod is regarded by most as invalid, and its decrees are regarded as never having achieved a binding force.[49]

The Synod of Diamper imposed the obligation of reciting the divine Office publicly or privately on all the Malabar clergy in major Orders of the Malabars, and this obligation was characterized as binding "sub gravi".[50]

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[48]Puthiakunnel, op. cit., footnote 35, p. 133.

[49]Thaliath, The Synod of Diamper, Orientalia Christiana Analecta, n. 152 (Rome, 1958), is a dissertation favoring the invalidity of the Synod of Diamper; this position is supported by Puthiakunnel, op. cit., 23; cf. Placidus A.S. Joseph, Fontes Iuris Canonici Syro-Malankarensium -- Fonti, Serie II, Fasc. IX (Typis Polyglottis Vaticanis, 1940), p. 7.

[50]Synodus Diamperitana, 1599, Actio VIII, decr. V, -- Mansi XXXV, 1279-1280.

"The Latin Missionaries since they were under the obligation to say the Breviary 'sub praecepto gravi' according to the practice they followed, thought the Malabar clergy in major Orders were also bound by the same precept."[51] This gave rise to a practice among the Malabar clergy of saying the Office, and they believed they were bound "sub gravi", and accordingly one may ask if there was established a legal custom which in time gained the force of law? Puthiakunnel has no hesitation in saying that the custom was based on error (the belief that the decree of Diamper was binding), and that customary law could not arise when error gave rise to a custom praetar legem.[52] Therefore the canonical force of any custom that arose regarding the recitation of the divine Office after the Synod of Diamper was at best highly questionable, because of the invalidity of the Synod. Indeed the questionable force of any custom praeter legem when based on an erroneous approach has as little binding force in its favor as any doubtful law.

The ruling law, then, for the Malabar Church is the legislation and practice of the Chaldean Church that obtained before the Synod of Diamper. This, as has been seen, implied the existence of an obligation to recite the divine Office but the obligation was not deemed to bind "sub gravi". In the Malabar Church the subdiaconate is regarded as a major Order, and so the obligation begins with the subdiaconate.[53]

This writer must disagree with one of the conclusions which Puthiakunnel draws in dealing with Canon 76 of Cleri Sanctitati. "We have already said that

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[51]Puthiakunnel, op. cit., 141.

[52]Ibid., p. 23; cf. Michiels, Normae Generales (2 vols., 2 ed., Paris: Desclée et Socii, 1949), 132.

[53]Puthiakunnel, op. cit., 155.

the foundation of this obligation is 'holy orders' . . . they (the Malabar clergy) have an obligation on them because of the general law which has constituted 'holy orders', as the foundation of this obligation."[54]

On the contrary Canon 76 does not set up the obligation simply in virtue of a clerics major Orders; rather the obligation as regulated by the particular law, rests on those in sacred Orders. The particular law is the ruling factor; any obligation that the cleric has, arises from the particular law, and the Supreme Legislator confirms that law. If particular law is silent, whether the particular law is synodal or customary, the general law is silent too, so that no obligation, even sub levi, can be deduced from the general law alone.

I. Copts

Pope Benedict XIV in his Instruction to the Copts in 1745 stated that deacons were bound to recite the divine Office.[55] It explained that the obligation incumbent on all clerics from deaconship upwards bound more suae nationis:

> If the discipline in the Oriental Church generally subjects all in Sacred Orders to the obligation and precept of reciting the divine office more nationis, then the same obligation and the same precept of fulfilling the canonical hours more suae nationis affects the Coptic deacons, who through the solemn ratification given over a reasonable time (tempore habili) renew their assent to the Sacred Order received in infancy.[56]

The Synod of Alexandria, 1898, bound all clerics in major Orders to recite the

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[54] Ibid., p. 157.

[55] Instr. Eo quamvis tempore, 4. maii, 1745, ¶ 42: "Imminet etiam diaconis ratam habentibus suam Ordinationem onus dietim recitandi Officium divinum". -- Fontes, n. 357.

[56] Eo quamvis tempore, ¶ 45.

divine Office daily.[57] The Synod did not specify whether this applied only to public celebration, or whether there was an obligation to recite the divine Office privately. In dealing with the life of the clergy, the Synod strongly stressed the duty of "reciting" the Office.[58] However the mind of the hierarchy was indicated when, with the publication of a new Coptic breviary in 1930, the episcopal conference imposed it upon the clergy for both private and public recitation, thus implying, at least that private recitation was considered obligatory, though there was no mention of the gravity of the obligation.[59]

J. Armenians

There is no doubt concerning the obligation of the divine Office among the Armenians. The Synod of Rome in 1911 imposed a grave obligation of reciting the divine Office in private on all those who were in major Orders.[60] This includes subdeacons, because subdiaconate was considered a major Order among the Armenians.[61]

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[57] Sectio II, Cap. II, Art. I, n. 2: "Ad officium divinum quotidie persolvendum tenentur omnes qui in maioribus ordinibus sunt constituti. -- Synodus Alexandrina Coptorum, 1898 (Romae, 1899), p. 61.

[58] Sect. II, Cap. VII, Art VI, n. 1, I: "Hinc quotidie recitationi et lectioni sacrarum scripturarum aut librorum patrum sedulam operam navabunt." -- Ibid., p. 149.

[59] De. Clerq, Histoire des Conciles (Tom. II, Paris: Libraire Letouzey et Ane, 1949 - 1952), Pars 2, p. 1017.

[60] N. 740: Quoniam clericorum est orationi et ministerio instantes esse, statuit Synodus teneri sub gravi clericos in sacris constitutos recitare divinum officium quotidie . . . quare statuimus sub gravi teneri clericos in maioribus constitutos recitare privatim officium divinum iuxta schema in appendice huius Synodi relatum. In hoc casu facultas erit praecedenti die nocturnum et matutinum recitare sequentia diei. -- Acta et Decreta Concilii Nationalis Armenorum, 1911 (Romae, 1913).

[61] N. 520: "Primus in maioribus ordinibus gradus est subdiaconorum."-- Ibid., p. 255.

CONCLUSIONS

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1. The structure of the divine Office was formed mainly in the monasteries. The monastic rules of the East made attendance at the daily Hours of the Office an obligation for all monks. St. Benedict (6th century) placed a similar obligation in his Rule for western monasticism. Local councils from the 5th to the 10th centuries bound clerics attached to a church or to a benefice to be present at the Office in church. (pp. 7-15)

2. The Corpus Iuris Canonici contains legislation which binds clerics of churches to celebrate the divine Office worthily in church; it does not deal with private recitation. St. Thomas and the Decretalists were almost unanimous in claiming that major Orders, even without attachment to a church, automatically imposed the obligation of the divine Office: one was at least bound to a private recitation. Religious and benefice-holders were also bound, and if they failed to be in attendance at the Office in church, they were bound to recite it in private. For most, the private recitation simply involved the reciting of any prayers they could freely choose. (pp. 32-33)

3. By the 17th century it was the common teaching that clerics in major Orders were bound to recite the divine Office by reason of a custom that had grown up over the previous few hundred years. This custom had the force of law. The obligation for religious arose from the constitutions or from custom; the benefice-holder was obliged by the general law. The Office was recited mainly in private. The universal written law never made specific mention of

the private recitation. The custom which bound those who were in major Orders remained a custom until the promulgation of the Code of Canon Law in 1917. (pp. 41-51)

4. According to the Code, clerics in major Orders, benefice-holders and religious who are solemnly professed, except lay brothers, are bound to recite the divine Office daily. There is an obligation to recite the Office in choir in houses or religious orders for which the choral obligation is incorporated in their rules or constitutions, and the same obligation rests on canons of cathedral and collegiate chapters. (pp. 57-76)

5. The Office should be recited at the time of day most closely corresponding to the part of the Office that is to be recited. This was especially emphasized in the Constitution on the Sacred Liturgy of Vatican II. The obligation of the divine Office is an obligation to sanctify the whole day reciting the Church's public prayer at the time most closely corresponding to the true canonical time of each Hour. (pp. 89-95)

6. The residential bishop or his equivalent in law can dispense his subjects in particular cases from this obligation for a reasonable cause. The religious ordinary can dispense his subjects in individual cases from the obligations of the individual recitation; his dispensing power concerning the choral obligation of a house is determined by the constitution of the Order. (pp. 117-126)

7. The teaching of the Constitution on the Sacred Liturgy on the divine Office,

and the present practice of the Holy See and of the bishops in dispensing from this obligation seem to indicate that there is some measure of probability in the opinion which now considers the obligation of the divine Office for those who are in major Orders to be a light obligation. (pp. 127-140)

8. The obligation as resting on clerics in major Orders should be completely reviewed, and it seems that the obligation should be stated in such flexible terms that it would allow the cleric to choose whatever means of prayer he prefers in praying for and on behalf of the Church. (pp. 141-146)

9. In the Oriental Churches the obligation differs from one Rite to another. The particular law, customary or statutory, of each Church determines the obligation and its gravity. The Armenians have a grave obligation to recite the divine Office daily; one opinion would hold that the Ukrainians were similarly bound; the Syrians, Chaldeans, Malabars and Copts have a light obligation to recite the Office; the Melkites and the Maronite clergy are bound to recite only certain parts. (pp. 150-153)

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ABBREVIATIONS

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AAS -- Acta Apostolicae Sedis.

CpRM -- Commentarium pro Religiosis et Missionariis.

Eph. Lit. -- Ephemerides Liturgicae.

Fontes -- Codicis Iuris Canonici Fontes cura . . Gasparri editi.

Hardouin -- Acta Conciliorum, etc.

HPR -- Homiletic and Pastoral Review.

IER -- Irish Ecclesiastical Record.

Mansi -- Sacrorum Conciliorum Nova et Amplissima Collectio.

MGH -- Monumenta Germaniae Historica.

Periodica -- Periodica de Re Canonica, Morali, Canonica, Liturgica.

PL -- Migne, Patrologia Latina

S.R.C. -- Sacrorum Rituum Congregatio.

BIOGRAPHICAL NOTE

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Martin Semple was born on November 19, 1940, in Thurles, Co. Tipperary, Ireland. He received his elementary and secondary eduction in the Primary and Secondary Schools of the Irish Christian Brothers, Thurles. Having completed his secondary education in June, 1958, he entered St. Patrick's Seminary, Thurles, in September of that year. On June 14, 1964, he was ordained a priest of the diocese of Salt Lake City, Utah, in the Cathedral of the Assumption, Thurles. He was assigned by Most Rev. Joseph L. Federal, D. D., to study Canon Law, and in September, 1964, he entered the Canon Law School of the Catholic University of America, Washington, D. C., where he received the degree of the Baccalaureate of Canon Law in June, 1965. He received the degree of the Licentiate of Canon Law in June, 1966.